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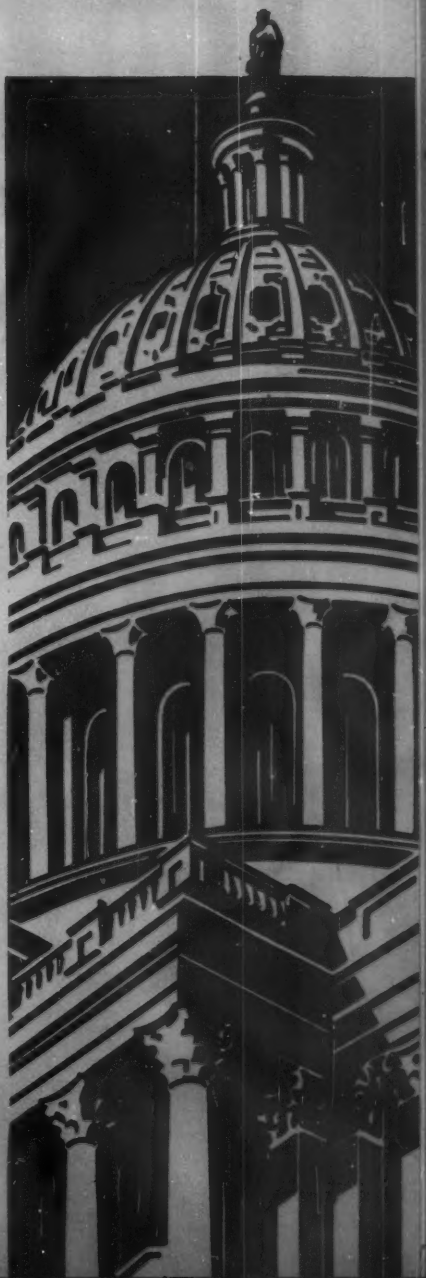

Congress Considers A New Food and Drugs Bill

Record of Federal Food and Drugs Legislation since 1850

Dr. Harvey W. Wylie's Fight in 1906

Government Agencies Dealing With Food and Drugs

Demands for Changes in Existing Law

Should Congress Enact A New Food and Drugs Law?

Discussed Pro and Con by Leading Authorities

Progress of Major Legislation

WASHINGTON, D.C.

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THE CONGRESSIONAL DIGEST

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FACT MATERIAL

PRO AND CON ARGUMENTS

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THE QUESTION THIS MONTH:

Should Congress Enact a New Food and Drugs Law?

The Senate Committee on Commerce Considers the Copeland Bill

For several years officials of the Food and Drug Administration of the Department of Agriculture have been urging that the Food and Drugs Act of 1906, generally referred to as "the Wiley Pure Food Law," be strengthened and extended to reach conditions in the manufacture and sale of foods and drugs which have grown up since the Act of 1906 was passed.

Years of practical operation under the Act, they pointed out, have demonstrated certain weaknesses; have proven that certain conditions desired to be reached under the Act could not actually be reached.

This, together with the development of cosmetics and so-called curative devices, neither of which is covered by the original act, convinced those in charge of its administration that new legislation was needed.

The efforts of the Food and Drug Administration resulted in the adoption of an amendment or two which helped some but which did not come near reaching the degree of improvement the officials desired.

With the advent of the Roosevelt Administration, Henry A. Wallace became Secretary of Agriculture and Rexford G. Tugwell became Assistant Secretary.

When, in the natural course of their survey of the Department over which they had been placed in control, they came to consider the Food and Drug Administration, Secretary Wallace and Professor Tugwell heard from Dr. W. G. Campbell, chief of the administration, and P. B. Dunbar, assistant chief, what the bureau felt should be done toward revamping the Food and Drugs Act.

As the result of several conferences within the Department it was decided that, whereas in recent years efforts had been made to improve the existing law by amendment, better results could be obtained by repealing the old law entirely and substituting for it a brand new law.

This plan met with the approval of Secretary Wallace and Professor Tugwell and instructions were issued for the drafting of a new law.

The actual work of drafting was done by Dr. Campbell, chief of the Food and Drug Administration, Mr. Dunbar, assistant chief, Professor David F. Cavers, of the Duke University Law School, and Frederick P. Lee, a Washington attorney, who for seven years was one of the legislative counsel of the Senate, an expert in drafting legislation. Attorneys in the office of the Solicitor of the Department of Agriculture and attorneys in the Department of Justice went over the bill after it had been completed and gave it their approval.

When the bill had been given the final touches it was handed to Senator Royal S. Copeland of New York, who had agreed to sponsor it in the Senate. It was introduced by Senator Copeland on June 12, 1934, given the number, S. 1944, and referred to the Committee on Commerce, of which Senator Copeland is a member.

Senator Hubert D. Stephens of Mississippi, chairman of the Committee on Commerce, appointed a subcommittee to consider the bill and it was ordered by the Committee on Commerce that the subcommittee hold hearings during the recess of Congress. The members of the subcommittee are, Senator Royal S. Copeland, Democrat, New York, chairman, and Senators Hattie W. Caraway, Democrat, Arkansas, and Charles L. McNary, Oregon, Republican.

Hearings were set for December 7 and 8. The Secretary of Agriculture was the first witness for the proponents and confined himself to a brief statement in which he said that the bill met with his unqualified approval. Dr. Campbell followed and explained in detail the reasons for the demand for new legislation. Professor Tugwell did not appear.

Various organizations and individuals appeared in support of new legislation while food and drug manufacturers appeared in opposition.

So far as strengthening the old law was concerned, there was no opposition. All agreed that it failed to reach certain conditions it ought to reach, but there was sharp

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Food and Drugs Legislation

1850-1930

1850

Congress passed an act providing for the exclusion from import of certain brands of teas and for the classification of those permitted entry into the United States. This act is considered to have been the first step in the struggle to guarantee pure food to the American consumer by Federal law. The use of artificial coloring in tea was prohibited by the law on the ground that it constituted adulteration. This tea law has remained in force, with some modifications, up to the present time.

1851

Apothecaries of New York and Philadelphia and members of the New York College of Pharmacy and the Philadelphia College of Pharmacy met in New York City to consider the existing laws controlling the importation of adulterated and sophisticated drugs. This meeting resulted in the formation of the American Pharmaceutical Association.

1879

Bills began to appear in Congress designed to protect the public against adulerated foods and drugs, but none were taken seriously by either house.

1884

A resolution was introduced in the House authorizing an investigation of adulterated food and drugs by the Committee on Public Health, but it received only fourteen favorable votes.

1889

Senator A. S. Paddock, of Nebraska, introduced the first bona fide pure food bill to be considered by Congress. Senator Paddock had made four unsuccessful attempts to obtain action on a similar bill in the preceeding Congress. After heated debate the Paddock bill passed the Senate, but it failed to receive the approval of the House. During subsequent sessions other bills of the same character were presented to either one house or the other, and were promptly killed. Pure food measures at that time were looked upon as the work of cranks and reformers.

1890

Congress passed an act for the inspection of meat for export and for the prohibition of the importation of adulterated food and drinks, largely caused by the refusal of Germany and France to receive diseased meat from the United States.

1892

Between the years of 1887 and 1892 hundreds of petitions were sent to Congress protesting the manufacture of compound lard. This precipitated a contest between the cotton-seed oil producing states and the hog-raising states, as compound lard is a lard substitute made by compounding cotton-seed oil and beef stearin, with or without an admixture of genuine lard. Senator Zeb Vance, of North Carolina, caused much laughter in the Senate by announcing the death of a pure food measure known as the Lard Bill. "Mr. President," said Senator Vance, "the Conger Lard Bill is dead; 'tis grease, but living grease no more!"

Opposition in Congress to the passage of pure food legislation during this period, came, first, from those who objected on the ground that such laws would be an invasion of the police powers of the states. Senators and Representatives holding these views were mostly Southern Democrats. Naturally the manufacturers of those products which would be hit by the proposed laws opposed their passage. Lack of interest on the part of the rest added to the difficulty of arousing Congress to action.

1895

A national conference of those interested in the repression of the adulteration of foods and drugs was held in Washington, attended by representatives of the Governors of most of the States. Nothing definite was accomplished in promoting pure food laws, as the convention bent most of its energy on discussing how a law should be enforced rather than working out plans to obtain the passage of legislation.

1898

The National Association of State Dairy and Food Departments was organized. This association held annual meetings to promote the passage of state pure food laws, but soon decided that only a national law would be adequate. The states, acting separately, could not protect themselves against interstate commerce, and the manufacturers found it difficult to meet the different standards adopted by various states.

1902

Dr. Harvey W. Wiley, chief chemist in the Department of Agriculture, organized what came to be known as "Doctor Wiley's Poison Squad." This was an experiment, given authority by act of Congress, "To enable the Secretary of Agriculture to investigate the character of food preservatives, coloring waters and other substances given to foods, to determine their relation to digestion and health, and to establish the principle which should guide their use."

"Dr. Wiley's Poison Squad" was composed of twelve healthy young volunteers who were employees of the Department of Agriculture. They were "sworn in" for a year, pledging themselves to eat nothing but what should be prescribed for their dining table, located in the department. The result was that the "poison squad" became the most highly advertised boarding-house in the world. It was decided by Dr. Wiley, after a five-year period of these experiments, that certain of the commonly used food preservatives were harmful to health.

1904

During this period the fight over pure food legislation became intensely bitter. Leading magazine writers centered their attacks principally upon the meat packing industry, although manufacturers of other food products and of drugs also received attention. Charles Edward

Russell, Upton Sinclair, Mark Sullivan and Walter Lippman were among the leading writers on the subject. Women's organizations became active. The General Federation of Women's Clubs organized a Pure Food Committee to carry on a nation wide campaign to organize public opinion behind a pure food bill.

1905

In his message to Congress of December 5, President Theodore Roosevelt briefly but forcefully called for legislation on the subject of misbranding and adulterating foods, drinks and drugs.

The Council on Pharmacy and Chemistry was brought into being by the American Medical Association for the purpose of subjecting to scientific scrutiny the innumerable proprietary medicines that were offered to the medical profession for prescription purposes and passing on to the profession the results of such investigations. The Bureau of Investigation of the American Medical Association is an outgrowth of this council.

1906

On January 10th, S. 88, introduced by Senator Heyburn of Idaho, came up for consideration in the Senate.

On February 21, Senator Heyburn had a resolution and a report read from the American Medical Association which endorsed the Heyburn bill. It claimed to represent the conviction of 135,000 physicians in 2,000 counties. On the same day the bill was passed by a vote of 63 to 4, not voting 22.

On June 21, 22, 23, the bill was discussed on the floor of the House after the Committee on Interstate and Foreign Commerce which had reported it, had substituted for it the House Bill, striking out everything after the enacting clause. The House Bill provided for the fixing of food standards and contained a provision on narcotics, which the Heyburn bill did not have. After a lively debate the House passed its own bill, by a vote of 241 against 17, and the bill was sent to conference.

In urging the passage of his bill on the Senate floor, Senator Heyburn pointed out that there were many fraudulent food articles which could not be sold in the states in which they were manufactured, because of the laws of that state, but which were shipped out for use in other states whose laws were more lax. Senator McCumber of North Dakota, charged that the principal opposition to the bill came from the meat packers, the liquor dealers and the manufacturers of patent medicines.

On June 29, the House and Senate agreed to the conference report. All the important features of the Senate bill were retained, the provision on narcotics added, and the House clause for the creation of food standards was eliminated. The next day it received the President's signature. This was the famous "Food and Drugs Act of 1906."

On the same day the President signed the food and drug bill, he also signed the agricultural appropriation bill. Attached to this bill was a rider providing for Federal inspection of meats, generally known as the Meat Inspection Act. The Food and Drugs Act went into effect January 1, 1907, and the Meat Inspection Act on July 1, 1906.

1907

The Secretary of Agriculture appointed a Board of Food and Drug Inspection, the duties of which were to consider the question arising in the early days of the enforcement of the new Food and Drug Act upon which the decision of the Secretary of Agriculture was necessary, and to conduct hearings upon alleged violations of the law. It also considered and supervised the voluminous correspondence occasioned by the new law, most of which involved interpretations. The Board was abolished in 1915.

1912

The Sherley amendment to the Food and Drugs Act was passed, prohibiting false and fraudulent labels on patent medicines.

1913

In his annual report, Secretary of Agriculture, Houston, recommended amendments of the Food and Drugs Act to provide for broader definitions of food and drugs, to give the Department authority to fix standards and to increase the fines for violation. Further recommendations along the same lines were contained in his annual reports of 1914, 1915, and 1917.

1914

The Food Standards Committee which is still functioning, was appointed. This Committee of nine members is appointed by the Secretary of Agriculture,—three from the Federal Food and Drug Administration, three from the Association of American Dairy, Food and Drug Officials, and three from the Association of Official Agricultural Chemists. It formulates the standards to be adopted by both federal and state agencies with a view to attaining uniformity in action.

1917

Dr. Carl L. Alsberg, then chief of the Bureau of Chemistry, sought authority from Congress to fix food standards, to inspect warehouses, and to control fraudulent mechanical devices and remedies, but it was not granted.

1923

Congress enacted legislation regulating interstate and foreign commerce in livestock and other agricultural or dairy products, and prohibiting commerce in "filled" or adulterated milk. This measure was pressed by the association of University Women and other leading women's organizations.

1924

The Supreme Court, interpreting the Food and Drugs Act, declared: "Deception may result from the use of statements not technically false or which may be literally true. The aim of the statute is to prevent that resulting from indirection and ambiguity, as well as from statements which are false. It is not difficult to choose statements, designs and devices which will not deceive. Those which are ambiguous and liable to mislead should be read favorably to the accomplishment of the purpose of the act."

1930

Secretary of Agriculture given power to set up standards for certain canned foods.

1930

Congress passed the McNary-Mapes Amendment to the Food and Drugs Act of 1906, providing for the standardization of a limited class of canned goods.

Government Agencies Dealing with Food and Drugs

DEPARTMENT OF AGRICULTURE

The Food and Drug Administration: Created by Congress in 1927, upon the recommendation of the Secretary of Agriculture, for the specific purpose of administering a group of acts enforced by the Department of Agriculture that are designed primarily to promote purity and truthful labeling in certain commodities essential to the public health and to the economic welfare of the Nation. These acts are the Food and Drugs Act, the Insecticide Act, the Caustic Poison Act, the Naval Stores Act, the Tea Act and the Import Milk Act.

The personnel of the administration approximately 530, includes administrative officers, chemists, bacteriologists, physicians, veterinarians, entomologists, plant pathologists, microscopists, pharmacologists, inspectors, and other specialists, with the necessary complement of clerks and helpers. Branch stations manned by specialists are maintained in 16 of the leading commercial cities of the United States to supervise interstate and foreign commerce in foods, drugs, insecticides, fungicides, naval stores, and caustic poisions. Each station is responsible for seeing that the six acts enforced by the administration are complied with by the manufacturers, dealers, and importers who trade within a specified territory tributary to the city in which the station is located. The station territories, covering the entire United States, are organized into an eastern, a central, and a western district, with headquarters respectively at New York, Chicago, and San Francisco. A responsible administrative officer directs the work of each district.

The Washington staff, consisting of approximately 200, is organized into executive supervisory offices and technical control laboratories to administer the various acts, to recommend methods for attacking regulatory problems, to conduct necessary investigations, and to solve the more difficult technological problems. At the head of the organization are the chief and assistant chief, who direct and coordinate the work in Washington and throughout the entire country.

The Federal Food and Drugs Act provides for the prosecution of the person or concern responsible for violating its provisions and for the seizure of the adulterated or misbranded products. Seizure actions are instituted in four classes of violations: (1) In the case of food products containing added poisonous or other added deleterious ingredients which may be harmful to health; (2) in the case of food products consisting in whole or in part of filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, or a product of a diseased animal, or one that has died otherwise than by slaughter; (3) in the case of food or drug products so grossly adulterated or misbranded with false or fraudulent claims that their distribution constitutes a serious imposition upon the public; (4) in the case of deliberate frauds in the shipment of adulterated and misbranded food prducts which seriously demoralize legitimate trade practices. If the violation does not fall clearly within one of these four classes, seizure action is not taken, but the party responsible for the violation may be prosecuted.

The Caustic Poison Act requires that each of certain caustic and corrosive substances, or preparations containing them, sold in containers suitable for household use, shall bear a conspicuous, easily legible label or sticker containing (1) the common name of the substance, (2) the name and place of business of the manufacturer, packer, seller, or distributor, (3) the word "Poison," in a specified type, plainly and conspicuously displayed, and (4) directions for treatment in case of accidental personal injury from the contents of the package.

The Naval Stores Act is a two-purpose act, having a service, as well as a regulatory, clause. It requires that all rosin and turpentine in interstate or foreign commerce shall be sold under the standards given in the act and provides that the word "turpentine" and the word "rosin" shall not be applied to anything other than naval stores of the United States standards. As a basis for enforcing these provisions, the act defines and establishes classes and grades for the several kinds of turpentine and rosin, makes the rosin types prepared by the Department of Agriculture the United States official standards for rosin, and authorizes the Secretary of Agriculture to establish and promulgate new standards and to modify existing standards whenever the interests of the trade require that this be done.

The Tea Act forbids the entry into the United States of any tea that fails to reach the standards of quality, purity, and fitness for consumption set by the Government.

When the first Federal tea act was passed, in 1883, 24 years before the food and drugs act went into effect, the United States was rapidly becoming a dumping ground for the world's worst tea. The enforcement of this act has brought about a marked change in the character of the tea reaching American shores. Tea exporters are familiar with the requirements of the United States and take care to send over only teas that meet these requirements. Nowadays very little tea is denied entry into the United States because of failure to comply with the standards.

Under the provisions of the tea act, a board of tea experts, appointed each year by the Secretary of Agriculture, fixes uniform standards of quality, purity, and fitness for consumption for teas to be imported into the United States. Samples of these standards are sold at cost to importers, who send them to their agents in the Far East, and similar samples are placed in the hands of the tea examiners at the various ports of entry. Samples from each line of tea offered for entry into the United States are examined. Those that do not conform to the standards are refused entry by the customs officials.

Under the law an importer may appeal to the Board of Tea Appeals a case on which he feels the decision

has been unfair. There is no appeal from the decision of this board, made up of three members of the United States Department of Agriculture.

The work of enforcing the Import Milk Act is centered at Rouses Point, N. Y., in the heart of the section through which comes most of the milk from Canada, the largest exporter of milk and cream to the United States.

The Secretary of Agriculture issues to applicants permits for the importation into the United States of milk and cream after it has been shown that the cows from which the milk is taken are healthy and have been subjected to a physical examination, including a tuberculin test, within a year of the taking of the milk being offered for entry, and that the farm from which the milk comes, or the plant in which it has been handled, scores at least 50 on the score card drawn up by the Federal Bureau of Dairy Industry. A corps of veterinarians and inspectors travels constantly through the milk-producing arear of Canada, checking upon conditions on the premises of applicants for permits. The Canadian Government assists in such inspections. The bacteriologists and inspectors attached to the Rouses Point station also test the milk or cream as it comes over the border, to make sure that it meets the standards for bacterial count set by the act and that its temperature has been properly controlled.

Bureau of Animal Industry: Enforcement of Packers and Stock-yards Act, meat inspection.

Bureau of Chemistry and Soils: Research; nutrition; utilization of foods and their by-products.

Bureau of Home Economics: Nutrition; diets, cooking, etc.

Bureau of Agricultural Economics: Grading of agricultural products (for facilitating commercial transactions in those products—not a consumer proposition); research in canned and dried foods; grading of meats.

Bureau of Entomology: Production of honey.

Bureau of Dairy Industry: Supervision of renovated butter plants.

Bureau of Plant Industry: Agricultural exploration to find foods which can be grown in the United States.

TREASURY

Customs Service: Inspection of all imported foods and enforcement of laws covering them.

Internal Revenue Bureau: Enforcement of Oleomargarine law.

Bureau of Narcotics: Enforcement of the Harrison narcotic law and related statutes, including the administration of the permissive features of the narcotic drugs import and export act, and cooperates with the Customs Service in the enforcement of the prohibitive features of the latter act. Also cooperates with the State Department in the discharge of the international obligations of the United States concerning the traffic in narcotic drugs and with the several States in the suppression of the abuse of narcotic drugs in their respective jurisdictions.

Public Health Service: Responsible for water on interstate carriers; purity of shellfish beds; sanitary surveys; cooperation with local health authorities.

DEPARTMENT OF COMMERCE

Bureau of Fisheries: Aids in development of resources.

DEPARTMENT OF JUSTICE

Prosecutes violations of food laws.

Senate Committee Considers Copeland Bill

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difference of opinion as to how the necessary changes should be made.

Where the Department of Agriculture, including officers of the Food and Drug Administration and Professor Tugwell (who, although he did not appear before the Senate Committee, wrote articles and delivered radio addresses in support of a brand new bill), urged the complete substitution of a new law, representatives of food and drug manufacturers took the position that a remodeling of the old law would be the quickest and simplest way to get all the needed reforms.

Publishers opposed the bill on the ground that it would penalize innocent publications for printing advertisements of foods or drugs when the publishers had no authoritative means of determining the truthfulness of the advertising matter.

One of the main points of controversy was the provision in the new bill that the Food and Drug Administration should have final authority to fix standards and to determine whether products, their labels or advertisements of them are in violation of the law and to prohibit them if they are.

Opponents of the bill wanted this power limited and subject to review by the courts.

After the hearings in December, Senator Copeland wrote amendments to the original bill, S. 1944, and reintroduced it as S. 2000. Later he made further changes and introduced a third bill, S. 2800, on February 19. This bill was approved by the subcommittee.

Instead of giving the Secretary of Agriculture arbitrary power to determine whether a given food product is or is not within the law, S. 2800 provides for boards of appeal to deal with the proposed regulations. Two such boards are provided for, to be appointed by the President, one of which will be composed of physicians interested in public health and the other composed of two representatives of the Department of Agriculture; three representing the consuming public, and two from the industries affected.

The full Committee on Commerce announced that before voting on whether to report the bill to the Senate, it would hold further hearings beginning on February 27.

In the meantime there are a number of other food and drug bills pending in both the Senate and the House, but the entire fight seems likely to center on the Copeland bill.

Why the U. S. Food and Drugs Administration Desires a New Law

DEMAND for a complete overhauling of the outworn mechanism the Food and Drugs Act of 1906 received a new impetus through the interest of the President of the United States and the sympathy and cooperation of the Secretary and Assistant Secretary of Agriculture. A bill to supplant the present measure was drafted in the Department, reviewed and approved by the Department of Justice, and introduced in the Senate by Senator Royal S. Copeland, of New York.

The new draft preserves all of the worthy features of the present law. Its principal additional features are as follows:

1. Cosmetics are brought within the scope of the statute.

2. Mechanical devices intended for curative purposes, and devices and preparations intended to bring about changes in the structure of the body are also included within the purview of the law.

3. False advertising of foods, drugs, and cosmetics is prohibited.

4. Definitely informative labeling is required.

5. A drug which is, or may be, dangerous to health under the conditions of use prescribed in its labeling is classed as adulterated.

6. The promulgation of definitions and standards for foods, which will have the force and effect of law, is authorized.

7. The prohibition of added poisons in foods or the establishment of safe tolerances therefor is provided for.

8. The operation of factories under Federal permit is prescribed where protection of the public health cannot be otherwise effected.

9. More effective methods for the control of false labeling and advertising of drug products are provided.

10. More severe penalties, as well as injunctions in the case of repeated offenses, are prescribed.

These added features are discussed below in the order in which they are presented.

1. The present law is wholly without jurisdiction over cosmetics, except in those rare instances when the labeling bears medicinal claims. While the majority of cosmetics are harmless, tragic occurrences have resulted from the unwitting use of products containing highly dangerous ingredients advertised and labeled as entirely harmless. No better medium of control and consumer protection exists than the Food and Drugs Act. It is logical to extend the provisions of the statute to cover cosmetics.

2. Mechanical devices, represented as helpful in the cure of disease, may be harmful. Many of them serve a useful and definite purpose. The weak and ailing furnish a fertile field, however, for mechanical devices represented as potent in the treatment of many conditions for which there is no effective mechanical cure. The need for legal control of devices of this type is self-evident. Products and devices intended to effect changes in the physical structure of the body not necessarily associated with disease are extremely prevalent and, in some instances, capable of extreme harm. They are at this time almost wholly beyond the control of any Federal statute.

3. The terms of the present Food and Drugs Act are not applicable to advertising statements relating to foods, drugs, and cosmetics. There has been a too common practice in some quarters to meet literally the requirements of the Food and Drugs Act as to the honest labeling of products subject to its jurisdiction, but to allow imagination full play in devising advertising designed to entice the consumer. The need for control of serious abuses in the advertising field has long been recognized by the public, by ethical manufacturers and advertising specialists. Appreciating its lack of control over advertising under the present Food and Drugs Act, the Food and Drug Administration several years ago began a series of educational broadcasts, and at the same time published articles in various journals, designed to encourage the intelligent reading of labels. It recommended that the more conservative label claims on products subject to the act be accepted at face value rather than the extravagant representations made in advertising. The campaign was not without effect. A very natural reaction, however, was a demand on the part of consumers and interested persons generally that legal control of advertising be inaugurated. Under the new bill the label provisions of the law will apply also to all forms of advertising, the responsibility for the truth of such statements being the manufacturer's, not the publisher's.

4. The present statute is largely negative in its requirements as to labeling. It provides not for what must be stated upon the label but for what must not appear thereon. It prohibits false and misleading statements, but does not insist on positive and informative statements except as to declarations of the quantity of contents on foods in package form and certain other very limited specific declarations. Following the inauguration of the read-the-label campaign there was a natural reaction on the part of consumers by way of a demand for more informative labels. The consumer pointed out that intelligent buying is difficult, if not impossible, unless labels are required to carry enlightening information as to the composition and character of a product. Under the new bill provision is made for disclosure on the label of sufficient facts to enable intelligent and discriminating buying—a requirement that will operate unquestionably to the advantage of the consumer and the responsible manufacturer.

5. Practically all drugs are dangerous if not properly administered. Prohibition of traffic in dangerous drugs would rule most legitimate medicinals off the market. Certain products having distinct physiological effects and unquestionably to be classed as drugs are so potent for harm if indiscriminately administered that there can be

no excuse for their unrestricted distribution to the consuming public. The Food and Drug Administration has published repeated warnings about the danger of such products. It could go no further under its legal powers. The new bill prohibits traffic in any drug product of this type which is, or may be, dangerous to health under the conditions of use prescribed in the labeling thereof.

6. The present law gives the Department of Agriculture no authority to establish legal standards for food products, except in the limited field of canned foods. The food standards announced by the Department are wholly advisory in character and compliance is a voluntary matter on the part of the manufacturer. Such advisory standards are based upon the consensus of consumer understanding and upon good manufacturing practice. To prove that a product sold within the jurisdiction of the Food and Drugs Act and that fails to comply with the advisory standard is adulterated or misbranded, it is necessary for the Department to present to the court and jury convincing evidence that the advisory standard does represent the actual composition of the product expected by the consumer and recognized by the majority of the trade. Proof that the food on trial does not meet the advisory standard is of no avail unless the validity of the standard is first established. This imposes a double burden of proof upon the Government as well as the expense of bringing into court trade and consumer witnesses who are prepared to testify that the advisory standard accurately represents the material in question. It has long been recognized that this necessity imposes a handicap of undue proportions upon the Government and that the lack of legal standards is a distinct disadvantage to ethical manufacturers who are forced to compete with products which differ from the advisory standards. The establishment of food standards having the force and effect of law will vastly simplify the problem of enforcement and will unquestionably be of great advantage to the consuming public and to the manufacturer of legal products.

7. A complete elimination of all poisonous substances in foods is in some instances impossible. Where the presence of poisons is unavoidable their quantities must be kept so low that by no possibility will the food be harmful to the user. Where they may be dangerous in any quantity they should be absolutely prohibited. The present statute contains no provision authorizing either the complete prohibition of traces of poison in foods or the establishment of tolerances for poisons. On the contrary, it imposes upon the Government the obligation of showing affirmatively in every instance that a food containing an added poisonous ingredient may be harmful to health under the conditions of use. The problem of establishing possible poisonous effects as a result of the consumption of minute quantities of poisonous ingredients in foods presents extreme difficulties. Without such proof a food containing an added poison cannot be condemned as adulterated. The Government is not permitted in establishing its case under the terms of the present statute to take into consideration similar poisons in other items of the diet, although these may contribute to the total intake of the poison and be an important factor in determining the relative harmfulness of the adulterant.

8. A distinct consumer health hazard is involved in the unsatisfactory and dangerous sanitary conditions prevailing in crabmeat packing establishments, but authority does not exist in the present law to compel the packers to improve factory conditions. The Administration must confine its legal actions to seizure and prosecution if, and when, interstate shipments can be shown by bacteriological analysis to be definitely polluted. The difficulty of establishing proof of violation by objective examination has been pointed out. The new bill provides power to require manufacturers to operate in such instances under Federal permits. The issuance of such permits would be predicated upon the condition that proper sanitary control be maintained, and shipment without valid permit would constitute a criminal offense.

9. The present law defines a drug as misbranded if its label bears false and fraudulent therapeutic claims. This requirement imposes upon the Government the necessity of proving not only that the preparation will not have the curative or therapeutic effects claimed, but likewise that in making such claims the manufacturer was guilty of fraudulent intent, that is, that he had knowledge of the ineffectiveness of the product. It is a comparatively simple matter to prove through competent medical evidence that an extravagantly labeled medicine will not be effective in curing the disease conditions for the treatment of which it is offered. It is far more difficult to establish that in making such therapeutic claims the manufacturer did so with knowledge of their falsity.

The manufacturer's intent in no wise ameliorates the damage sustained by the consumer of worthless medicines. The new measure proposes to eliminate the need for establishing the fraudulent character of false representations with regard to medicinal products, and instead holds a drug misbranded if its label bears any representation directly, or by ambiguity or inference, concerning the effect of the drug, that is contrary to the general agreement of medical opinion.

10. The present law establishes a fine of $200 as the maximum penalty for a first offense. The present statute, in case of a second offense, provides for a fine not exceeding $300 or imprisonment for not exceeding one year. Chronic offenders under such conditions may readily regard a fine as merely a tax on continuing a profitable illegitimate business. The new bill imposes materially more severe penalties.

The bill retains the requirement of the present statute prohibiting traffic in foods that contain added poisonous ingredients that may render them injurious to health, or that may be filthy, putrid, or decomposed, or that may be debased by abstraction of some valuable ingredient or admixture with some substance reducing quality or strength. It retains the United States Pharmacopoeia and National Formulary as the standards for the drugs named in those authorities but strengthens and amplifies the existing provisions. It retains requirements for the declaration of certain habit-forming narcotic or hypnotic drugs in medicinal products and imposes the additional requirement that the label bear a warning statement that the product may be habit forming.—*Extracts, see* 2, *p.* 96.

Should Congress Enact a New Food and Drugs Law?

PRO — Arguments Favoring

by
Rexford G. Tugwell
Assistant Secretary of Agriculture

THE depression has had a serious effect on advertising standards. As revenues to advertising media declined, and as advertising agencies received smaller and smaller budgets from manufacturers, some of the agencies took on more questionable accounts, poured more and more ballyhoo into their copy, and the advertising media began decreasing their standards, a little at a time. Large publishing houses that had done a great deal to improve the character of national advertising, that had turned down accounts running into hundreds of thousands of dollars annually, began to stretch a point or two to admit advertising filled with questionable innuendo. One of the crusaders for clean advertising found its revenues swelled by running a full-page advertisement which represented an ordinary mouth wash as a preventive for tuberculosis. So the depression reduced standards, and consumers suffered accordingly.

While national magazines, good metropolitan dailies, and radio networks carry many fraudulent and misleading advertisements, by far the most flagrant abuses are found in movie magazines, mail-order catalogues, educational and religious journals, cheap fiction or "pulp" magazines, small dailies, country weeklies, and on small independent stations, as well as in direct mail advertising. This again is probably a matter of competition. Just why a "pulp" magazine should declare that a depilatory is *safe* to use when it is known that the depilatory contains a positively dangerous ingredient that sends users to hospitals, causes all hair to drop from the body, and sometimes leads to death, I do not know unless it is that the better advertising accounts have exhausted their funds before they reach this class of publication and it must, perforce, take what it can get. Apparently educational and religious journals find themselves in the same predicament. Many small-town newspapers salve their consciences for advertising perfectly worthless and often dangerous products by charging a higher advertising rate for this type of copy.

Publishers, as well as advertisers, themselves, are making some effort to improve the situation, and I wish it were possible for advertisers, agencies, publishers, and broadcasters to clean up the advertising business in every nook and hamlet of the United States. Unfortunately, that is far too much to expect. The presses of this country turn out 40 million copies of newspapers every day; they print 120 million copies of magazines every month; 600 radio stations broadcast daily with smooth and persuasive voices, turning on sales appeal full tilt. How many millions of direct-mail circulars flood the mails every month no one knows. Those are some of the outlets. Advertising originates from some 5,000 manufacturers of medicinal preparations, 2,000 cosmetic manufacturers, and thousands of food manufacturers. That is only part of the picture. Retailers advertise too. There are more than 60,000 drug stores alone in the United States, proprietors of some of which are likely to sit down a few moments before their local papers go to press and dash off an intriguing advertisement for a new diabetes cure (there is no such thing) they have just placed on their shelves and which they will be glad to pass on to customers at $12 a bottle.

Patently, no privately organized group can regulate this whole field and give anything approaching a high degree of consumer protection. Physical limitations alone are too great, to say nothing of the impossibility of private enterprise managing a system of control that is completely unbiassed, scientific, uniform, and permanent. I am certain, however, that this very situation presents an opportunity for effective cooperation between industry and government.

Any intelligent conception of modern governmental functions must embrace the idea of effective consumer protection. The scope of such protective action must be progressively enlarged as population and the complexity of our social and economic life increase. Thus the protection afforded by the Federal Food and Drugs Act when passed in 1906 is radically insufficient today. Since the Act was originally passed there have been many changes in the food and drug industries, while the cosmetic industry has grown like a mushroom. New narcotic and habit-forming drugs have appeared on the market. Totally new food constituents and important nutrition elements like the vitamins have been discovered.

The 1906 law does not cover advertising, except that appearing on the label. As a result, false and misleading statements have merely moved from one place to another.

Believing some of the advertising they hear by radio and read in publications, people today are using dangerous fat-reducers and are thereby impairing their health; they are using depilatories with dangerous drugs and are being sent to hospitals; they are using "safe" hair dyes only to get lead poisoning for their trouble and money; they are taking radium water and are breathing their last; they are trying to cure colitis with a common laxative sold at a fancy price; they are trying to treat stomach ulcers with worthless tablets, only to impair their health with excessive cathartics; they are stuffing themselves with worthless nostrums and if, in despite of the nostrum, they get well, they sit down and write testimonials for the manufacturers.

Consumers want to know, naturally enough, why the government permits worthless products like these to be

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Should Congress Enact a New Food and Drugs Law?

CON

Arguments Opposing

by Elisha Hanson

American Newspaper Publishers Assn.

THE interest of the American Newspaper Publishers' Association is not that of a manufacturer or distributor of articles coming within the purview of these measures. The membership of the association is confined to publishers of daily and/or Sunday newspapers. Daily and Sunday newspapers comprise the most extensively used advertising medium in the United States. So naturally, any measure which affects advertising is of vital interest to publishers of daily newspapers. In order that there may be no misunderstanding as to their position, however, it is stated without equivocation that this association does not approve of false or fraudulent advertising. It wants none of it. And for more than 40 years its membership has constantly and unflinchingly opposed false and fraudulent advertising.

On the other hand, it should also be stated, and is so stated, that the association is opposed to this measure, in its present form, for reasons which will hereinafter be given.

Assuming for the purpose of argument, that the present Federal Food and Drugs Act should be strengthened, the question arises as to why a sincere effort is not made to plug the gaps in it rather than to rewrite it completely. Surely the years of experience under that law, together with the weight and value to be given judicial action thereunder, have not indicated its complete futility. However, this association does not care to discuss either the merits or the weaknesses of the act, the value or lack of value of products which come under its provisions or those of the pending measures. Rather, it will confine its discussion entirely to matters of procedure, which directly affect its membership.

This measure proposes that an unjustified and unwarranted responsibility be attached to publishers with respect to the representations contained in advertisements printed in their newspapers.

Under existing Federal law, the responsibility of publishers for advertisements appearing in their publications is specifically limited. The postal laws provide that all advertising matter shall be clearly identified as such and with respect to paid reading matter that it be specifically marked as an advertisement. The Securities Act follows the postal laws, except that in the case of paid reading matter, the name of the advertiser and the amount paid for the advertisement must be printed simultanously with and as a part of the advertisement.

Section 17 (a)-(3) and (4) of this measure, however, makes the publisher responsible for the dissemination of any false advertisement which may appear in his columns. Further, other sections of the measure contain not only a new definition of false advertising and a hitherto unheard of method of determining whether or not an advertisement is false.

Section 17 (b) fixes penalties, of both fine and imprisonment, for violations of paragraph (a).

These paragraphs must be distinguished from section 17 (c), which provides heavier penalties for willful violators than for innocent persons, as covered in sections 17 (a) and (b).

This association has no objection to the fixing of any penalty, however great, for the willful distribution or dissemination of false advertising of foods, drugs, cosmetics, or any other product in any way injurious to the public welfare.

It insists, however, that there is neither reason nor justification for the penalties provided for in section 17 (b) when and where the publisher is ignorant of the falsity of the advertising, especially when the untruth or misrepresentation is a subject for later determination by an executive branch of the Government, from the findings of which no appeal to the courts is provided.

If it be the purpose of the sponsors of this bill to prohibit the advertising of all food products, as well as all drugs and cosmetics, of whatever kind or description, the enactment of sections 17 (a) and (b) will accomplish it, for under those prohibitions and penalties no publisher would dare to accept an advertisement of any article which comes within the scope of the measure.

Equally, if not more, vicious, insofar as its application to the press is concerned, is section 19. Under this section, it would be possible to suppress any newspaper in this country on an allegation that it is guilty of the repetitious dissemination of false advertising of any food, drug, or cosmetic. Advocates of the measure may say this view is fantastic, but the author of the bill has specifically written into this section the provision that "in such injunction proceedings it shall not be necessary to show on the part of such person an intent to continue such nuisance." Further, it must be recognized that when an equity court takes jurisdiction, its power is unlimited.

The advertisement being an integral part of the newspaper printing it, this power of injunction, as this section is written, gives an unlimited power of suppression. Of course, insofar as newspapers are concerned, the section is in direct conflict with the first amendment to the Constitution of the United States, which provides that Congress shall pass no law abridging the freedom of the press.

In the foregoing discussion, the terms "false advertisement" and "false advertising" are used not per se but as defined by the proposed act. It is important that the truth or falsity of an advertisement is a matter left to

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sold. I wonder about that too. Consumers want to know why magazines will carry advertising which fraudulently claims a product will cure diabetes. Hundreds of reputable publishers, and I, are wondering about that also.

I know that most publishers and broadcasters are willing to sacrifice a few dollars—and often do—in the interest of public health. But what a hundred or even ten hundred publishers do will not solve the problem. At present a chiseling minority too often defeats the constructive efforts of the majority. Under these circumstances we need the centralizing power of the government which will enable the majority to do collectively what they cannot do individually. One standard should apply to all. False advertising is just as harmful in Solomon, Kansas, as in New York City, just as harmful on a billboard as in a newspaper. We need the kind of agreement between the majority and the Federal Government that will give consumers real protection, and that will put an end to the illusory protection of the present inadequate law.

The revised Food and Drugs bill before Congress will, when passed, give that protection. It places responsibility where responsibility belongs—on the shoulders of manufacturers or persons placing the advertising. It requires publishers and broadcasters to supply the names and addresses of those placing advertisements, but it does not hold them liable, further than this. Neither does the revised bill require, as so many have supposed, that the Department of Agriculture is to become a high-powered censor, requiring that all advertising copy be submitted in advance.

I am convinced that with the Department of Agriculture possessing the authority this bill contains, publishers, and broadcasters, advertising agencies, and all their associations can do most of the actual policing. They can strengthen their own codes of fair practices and enforce those codes. If self-regulation falls down in any instance, the club can be taken from behind the door in the Department of Agriculture and wielded effectively against the person violating the code. This would be real cooperation between government and industry.

The punitive provisions of the new bill make all persons violating these provisions of the Act covering misleading and false advertising guilty of a misdemeanor, but exempt from prosecution publishers, advertising agencies, and radio broadcasters if, on request of the Department of Agriculture, they furnish the names and post offices addresses of persons who contracted for or caused the dissemination of the advertisements. Dealers, too, are under certain circumstances exempt from prosecution. The Department has authority to appeal to the District Courts to enjoin all media from continuing to carry objectionable advertising.

Many persons who are in full sympathy with the purpose of these provisions, who, in fact, want consumers to have increased protection, are fearful that the authority granted is too sweeping. Manufacturers think they may be subject to the whims of bureaucrats. I think I can dispel some of these notions.

Whatever the wording of a law or the desires of the lawmaker, the community's standards of good conduct or of fair practice inevitably determine the maximum level of law enforcement. There is abundant evidence that the public wants fraudulent and misleading advertising cleaned out of the press. There is not much evidence, so far as I know, that the public objects to a little prideful boasting on the part of the manufacturer. In fact, the Supreme Court of the United States find nothing illegal in "trade puffing." That is simply the advertiser's poetic license.

At the same time there is every reason to have a law sufficiently broad and flexible to make possible the conviction of those offenders whose conduct has fallen below the standards consumers demand. If the language of a statute is carefully restricted to just those cases of wrongdoing which its drafters can anticipate, the discovery of loopholes in the law is inevitable, and the difficulties of its enforcement will be multiplied manyfold. The weight of a strict statute, intelligently enforced, will seldom fall on others than those who merit its penalties. Furthermore, this new bill when once a law, will remain on the statute books, probably for many years without revision. Its provisions should now be broad enough that new inventions, scientific discoveries, or new methods of carrying on advertising, cannot make the law obsolete overnight.

Many well-wishers of the new bill are fearful that its enforcements will decrease the volume of some classes of advertising just when advertising revenue is low. That may be true—temporarily. Some products now sold in great quantity obviously will go in the discard when manufacturers no longer are able to spread untrue and ridiculous claims for those products before consumers.

But there is another side to this. The public is pretty thoroughly disgusted with much of the present advertising of foods, drugs, and cosmetics. Advertisers will readily recognize the truth of this. For example, advertising journals recently have been carrying articles saying that the "scientific slant" in advertising has been so overworked that the more ethical advertisers no longer dare use it, even when authentic. Advertisers killed the effectiveness of their appeal by the use of superlatives and exorbitant, pseudo-scientific claims. Perhaps a law that limited all advertising to the truth would help them in their dilemma.

Personally, I believe that if the character of advertising is improved, consumers will have more confidence in it. Manufacturers of legitimate products will be able to place their products before the public without fear of ruthless, uncontrolled competition in the form of silly claims for competitive products. In the long run, therefore, publishers and broadcasters should increase rather than decrease their revenues as the standards of advertising increase.

The just and reasonable administration of any law must depend on those charged with its enforcement. Whether or not the Food and Drug Administration has been reasonable in its methods of enforcing the old law for the past 27 years, I am willing to leave to any unbiased observer. I have seen some complaints that the Administration has been too zealous in seeking out those who violated the law; that some well-meaning manufacturers have been needlessly harrassed by enforcement of-

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Hanson, *Cont'd*

the sole determination of the Secretary of Agriculture, from whose finding of fact there is no appeal. It is even more pertinent to reiterate that the penalties of fine, imprisonment, and suppression may be inflicted upon a newspaper publisher entirely innocent of any willful intent, and for the printing of an advertisement about which there was no question at the time it was offered. In other words, the Secretary can make an ex post facto finding and then proceed against a publisher or his publication, or both.

The arbitrary and capricious character of such provisions is indicated by reference to section 9 (a), which says:

"An advertisement * * * shall be deemed to be false if in any particular it is untrue, *or by ambiguity or inference creates a misleading impression* * * *" (Italics supplied.)

To place such broad powers of determination in any individual, without the right of appeal, is unthinkable. To provide, as does this measure, ex post facto penalties, including that of suppression, for persons entirely innocent of any intent to violate the law is even more unthinkable. It is not only unwarranted and unjustified but un-American. Surely the Congress will not countenance such a preposterous proposal.

There can be no doubt that the sponsors of this measure seek to remove, insofar as possible, from the Federal courts all jurisdiction over food, drugs, and cosmetics and place it within a bureau of the Department of Agriculture. The present Chief of Food and Drug Administration of the Department, in a series of radio talks in the period of the National Farm and Home hour in September, October, and November complained of the failure of the courts to uphold many of his Bureau's contentions.

Just to illustrate how bureaus of the Department of Agriculture function when not subjected to judicial review, attention is called to the record of the hearing held on October 31, 1929, in the matter of the Asiatic and Japanese beetle quarantine enforced by the Plant Quarantine and Control Administration of that Department. This record discloses the outrageous fact that, after prescribing regulations for the conduct of business of nurseries within quarantined areas, the Department would not permit plants to be shipped from any such nursery unless bugs or grubs, introduced into the soil of the nursery by the Department's own agents, were killed by the treatment prescribed by the Department. In other words, under the terms of that regulation, if the Department suspected a nursery of being infected, but was unable to prove it, it would introduce the pests onto the premises, prescribe a treatment, supervise the giving thereof, and then, if its own bugs were not killed by its own formulas, refuse its approval for that nursery to make any shipments.

In order to grow the grubs the Department maintained a special laboratory for their propagation. Further, the record disclosed that as the Department became more adept in growing the pests, they, in turn, became more difficult to kill, and over a period of 3 years the poison formulas were changed five times, with the result that, in 1929, the formula then in use, even though it might not be wholly efficacious in destroying the Department's specially propagated pests, invariably destroyed all plant or vegetable life with which it came in contact.

Fortunately, there came a Secretary of Agriculture who, after a review, rescinded that regulation, but the important fact is that it had been enforced for more han 3 years before he acted, notwithstanding earnest and urgent protests of the nurserymen injured by it throughout that period.

With a record such as that of the quarantine regulation just referred to back of it, no administrative agency of the Government should be given such broad powers, as are proposed in this act without the safeguard of a prompt judicial review, both as to fact and law.

Insofar as false and fraudulent advertising are concerned, it is pertinent to point out that there is ample authority in existing law to take care of all offenders. The postal statutes provide for both fine and imprisonment for persons who use the mails to obtain money on the basis of any false or fraudulent representations. The Federal Trade Commission Act provides for a cease and desist order where such advertising injures a competitor. The query naturally presents itself as to why the Food and Drugs Administration has not availed itself of these statutes, if its own law is insufficient to meet certain exigencies. Until by actual experience and test they have proved inadequate, no further grant of power should be made.

In conclusion, this association is not opposed to any proper amendment of the Federal Food and Drugs Act in the public interest; it is not opposed to proper and adequate penalties for willful violators of the law. It does oppose the proposal to give the Department of Agriculture the broad powers included in the bill; it opposes making the Department the final arbiter in matters of fact; it opposes penalties on innocent persons; it opposes ex post facto penalties; it opposes the specific power to suppress a newspaper, even though it does not intend to offend or continue to offend.—*Extracts, see 1, p. 96.*

▼

by H. B. Thompson

Gen. Counsel, the Proprietary Association

SENATE BILL 2000, as rewritten by Senator Copeland, is not improved. It should not pass. The new bill is in substance and effect original S. 2000. No changes have been made therein which are of substantial benefit to industry. The changes merely impose greater burdens upon the industries affected, without attendant benefit to the consuming public.

The term "advertisement" as defined in the amendment includes all representations of fact or *opinion* disseminated in any manner or by any means other than by label or labeling.

Under the terms of Section 9 (a) an advertisement

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Tugwell, *Cont'd*

ficials. I have seen many more complaints to the effect that the Administration has not provided the degree of consumer protection intended by Congress; that officials have been too lenient with the trade.

Truth usually lies somewhere between such extremes. I believe that the Food and Drug Administration reflects in its enforcement activities the current standards of good business conduct of the American public. The advertising profession surely does not desire the privilege of falling below those standards.—*Extracts, see 3, p. 96.*

▼

by Walter G. Campbell

Chief, Food and Drug Administration, U. S. Dept. of Agriculture

I SHALL begin this discussion of the drug aspects of the Copeland Bill with the destruction of a popular fallacy. This fallacy is that there will be set up in the United States Department of Agriculture a czaristic authority having the power of life and death over the drug and cosmetic industries, and that the constitutional right of trial by jury will be denied. There never was anything more ridiculous nor unfounded.

What has given rise to such a delusion? The answer is doubtless to be found in the final sentence of Section 23, which reads, "The findings of fact by the Secretary of Agriculture shall be conclusive if in accordance with the law."

There are eighteen words in this sentence, but I can only conclude that a good many people have never read past the first dozen. "If in accordance with the law" is the important phrase. Whenever "the findings of fact" are brought before the court of review, and are found to be arbitrary, capricious, or unsupported by evidence, they will be overturned. At all times the Secretary's regulations, under the new bill, as under the present law, are subject to court review and will become invalid if found unreasonable or arbitrary. Since the courts can review every administrative act, it is obvious that there is no transference of power from the courts to the administrative branch of the Government.

So much for the misconception that the Copeland Bill will make the Secretary of Agriculture an autocrat of the medicine cabinet and the dressing table.

Another fallacy that we might as well do away with is that the new bill denies the right of self-medication. The bill recognizes the right of self-medication. Furthermore, it recognizes the right of every person who medicates himself to know what he is buying, as well as to receive competent directions for using what he buys so that it will not endanger his health. The Copeland Bill is interested only in giving the consumer a chance to know the truth about the medicine he takes, and to protect him against preparations which are dangerous when taken in accordance with the directions on the label. If the Copeland Bill did not recignize the right of self-medication, many of its provisions would be unnecessary.

Number three in our list of popular fallacies about the Copeland Bill is that it will work against the public by requiring the disclosure of proprietary medicine formulas.

"In the first place,"—I'm quoting an editorial comment from a trade magazine,—"the disclosure of the formulas of proprietary medicines on the package would be harmful to the public from two viewpoints. The first is that developments in medicines which represent real advances in therapeutics, are made by manufacturers for the reason that the manufacturers will be abie to profit from the sale of their products while they are improving the condition of the public health. If these manufacturers were afforded no such protection, then they would be unable to spend large amounts of money in therapeutic research by means of which these products are discovered. Further, if everyone is to be allowed to copy directly the formulas of these products, then, even though they are discovered, no one is going to spend the money necessary to educate either the medical and pharmaceutical professions, or the public to the benefits to be derived from them and thus they are never going to be used."

Contributions from therapeutic research are covered by patent laws, which fully protect anything new or novel about a drug product itself, or about the process for the manufacture of a drug product. Furthermore, it is almost impossible nowadays to keep secret the composition of drug products. Competitors can usually find out all they want to know through laboratory and other methods of investigation.

Now let's consider the second alleged reason that the disclosure of formulas would be harmful to the public.

"One other reason why formulas of proprietary medicines should not be published on the package, is the fact that a patient often reacts to medicines in an entirely different way if the ingredients are known. This fact will be testified to by the leading physicians of the country who, many times, demand that the patient shall not know the ingredients of prescriptions. Often a patient will make the statement to a physician that Aspirin, Luminal, Pyramidon, Bromides, or any one of a number of other products has no effect upon him. But if he is given an Aspirin tablet of different color or shape, or any of the other products properly disguised, the results will be very definitely in the proper direction."

The man who treats his own ailments has the same need and right as the physician to know what he is using. If the active ingredients are listed on the label, he can treat himself more intelligently, and he can avoid certain drugs to which he knows he is allergic. Are not these considerations vastly more important to his welfare, than the alleged psychological advantages of not knowing what's in the drug he is taking?

Another provision of the new bill is criticized by the drug industry in these words:

"Sec. 8. (a) (1) Provides that a drug product is mis-

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Thompson *Cont'd*

which expresses an opinion as to the value of a drug shall be deemed to be false, unless such opinion is supported by "substantial medical opinion or by demonstrable scientific fact."

The Supreme Court of the United States has declared that the language used in the present Food and Drugs Act deliberately excludes matters of opinion from the field of the act, as amended by the Sherley Amendment. Under the terms of the original act, before the Sherley Amendment was enacted, that court recognized that it would be the duty of a court to direct a verdict of acquittal except where, aside from any question of differences of opinion it is shown that the preparation is worthless. It is proposed by this bill to recall the decisions of the Supreme Court.

Section 22 provides for the creation of a Board of Health to assist the Secretary in the promulgation of certain regulations. A majority vote controls the decisions of the Board. I take it from the language used that it is hoped by the sponsors of the bill that criminal and libel proceedings may be commenced upon the basis of a majority vote of medical opinion.

A drug is deemed to be adulterated if it is dangerous to health under the conditions of use prescribed in the labeling. Under the broad power granted to the Secretary, and under this provision, proceedings may be commenced even in cases of abnormal reaction.

A drug is deemed misbranded if a disease is mentioned for which the drug is not a specific cure but a palliative and the labeling or advertising fails to declare that the drug is a palliative, and "how the palliation is effected."

What does this last provision mean? Does it mean that the palliation is effected by the administration of so many doses of the drug or will a complete statement and description of the physiological and pharmacological action of the drug and of pathological changes resulting from its administration, be required? Does it mean in the case, say, of a cough compound, that the palliation is effected by relieving the tickling sensation in the throat or must it carry a complete description of the manner in which the drug acts upon the system? If the first interpretation is intended then the provision is silly. It the latter, it is impossible.

Cosmetics are deemed to be adulterated if they contain any prohibited ingredients or in an excess of the limits of tolerance for such ingredients as *provided by regulations*. Under this the entire cosmetic industry may be controlled by the Secretary.

There have been some modifications of the provisions relating to hypnotic and the so-called stimulant-depressant and cumulative substances, but attention is called to the labeling requirements that there must be not only complete and explicit directions for use, but warnings "against use in such pathological conditions or by children where its use is contraindicated and may be dangerous to health or against unsafe dosage or methods of administration or application."

Thus the Secretary of Agriculture, aided by his distinguished committee, all the members of which committee may be opposed to self-administration, under this provision may impose such conditions as they see fit, and base these conditions upon an assumption of contraindication, danger to health, unsafe dosage, methods of administration or application. This provision is so inclusive that it may destroy the use of many drugs and compounds.

Attention is also called to the fact that to the narcotic list, Marihuana has been added. Just why, I do not know, as it is probably covered by Cannabis. In the list of sedative substances, instead of hyoscyamus, hyoscine and hyoscyamine have been inserted. In the cumulative substances, digitalis has been changed to digitalis glucosides, and ouabain and strophanthin have been added.

Section 23 relates to court review. If this section were deleted there would still remain under existing laws and court procedure all the rights with respect to review therein granted. The courts have always been open to challenge arbitrary and capricious conduct of officials and to challenge the validity of any act or regulation.

I assert that these provisions add nothing to that which already exists. If it is proposed to provide a court review let me suggest that if it is the honest intention to furnish court review, language in substance as follows should be used:

"Any party aggrieved by any regulation, finding or decree of the Secretary shall have the right for a review of the conduct and action of the Secretary or of any board of appeal or other official acting under or in conjunction with him, in a District Court of the United States. Such District Court is hereby vested with jurisdiction for that purpose, and shall hear and determine all of the facts in connection with such order, decree or regulation, and the court shall make such finding as the facts and law in the case shall warrant, and shall not be limited to a determination of whether or not such regulation, order or decree is unreasonable, arbitrary or capricious."

The new bill has made but little change in the provisions found in the old bills relating to permits, factory inspection, investigation, commencement of proceedings, seizures and penalties.

There have been a few almost meaningless changes. In the case of advertising, in original S. 2000, there is a provision that *no* advertisement shall be deemed false if it is supported by substantial medical opinion. In the amendment offered, the language is "any representation" shall be deemed false if it is *not* supported by substantial medical opinion.

There is a provision with respect to seizures upon the order of an officer—that such officer may seize goods only when he has "profitable cause to believe that the article is so adulterated as to be imminently dangerous to health."

I still maintain the view that private property should not be seized in America except after appropriate proceedings have been begun in court, that property should not be subject to seizure upon the basis of the guess or imagination of a small official.

I am unable to see wherein the amendments offered by Dr. Copeland have in any substantial manner improved S. 2000. Upon the contrary it does contain some new provisions under which it is not as satisfactory as the original S. 2000.

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Campbell, *Cont'd*

branded if its label or any literature accompanying the product *mentions* any disease for which it is not 'a specific cure,' *even though it is a palliative* unless in immediate connection with the name of the disease and in letters of the same size and prominence it states that the product 'is not a cure for' (such disease). There are only two or three 'specific cures' known to science. This provision is utterly unreasonable and is designed to hurt seriously the sale of package medicines which are of real value in the treatment of various diseases. If *any* provision, other than one requiring that the label and labeling *truthfully and clearly* represent the properties of the product, is required, a more reasonable and fair provision should be something like this: 'unless the labeling, by appropriate language, clearly and fairly represents that the product is no more than a palliative or of value as an aid in the treatment of such disease.' Such a provision would do all that the one in the Bill could *properly* be intended to do, would give full protection to the public and would not serve to wreck unjustly the package medicine industry."

The provision branded as "utterly unreasonable" is simply a means of guaranteeing to the consumer the truth, the whole truth, and nothing but the truth. The public, to whom package medicines are offered, does not have scientific knowledge of the nature and treatment of disease. The patent medicine industry, through its advertising of "cures" for every known ill, has miseducated the public in regard to the efficacy of drug products. In no other field of consumer goods has the long-suffering public been so efficiently misinformed. Only a definite provision will serve to offset this situation and give the consumer who wants to treat himself accurate information as to the therapeutic worth of drugs.

Still another criticism offered by those who oppose the new bill is that all the so-called "horrible example" medicines and cosmetics have already been put out of existence by the present laws.

This would be interesting if it were true. The bad examples cited by the Food and Drug Administration merely illustrate current abuses of which ample instances can be found. Koremlu, one of the very worst of the "horrible examples," is off the market now. But there is nothing in the present law which would prevent some criminally reckless soul from putting a similarly dangerous product on the market again. Women are still patronizing beauty parlors which use "lashlure"—although it is known to have almost blinded a number of people. Diabetics and those suffering from cancer and other serious diseases are taking "cures" which will never cure.

A number of the provisions in the new bill have been the law of the land, as applied to food and drug labels, for twenty-seven years. Section 6, which provides that a food, drug, or cosmetic shall be deemed misbranded "if its labeling is in any particular false, or by ambiguity or inference creates a misleading impression regarding any food, drug or cosmetic," has caused considerable disturbance. Except for its inclusion of cosmetics this provision is no broader than the present law. In interpreting the general misbranding provision of the Food and Drugs Act nearly ten years ago the Supreme Court said: "The aim of the statute is to prevent that (deception) from indirection and ambiguity, as well as from statements which are false." This provision, as thus interpreted, has worked no hardship on legitimate drug industries.

The new bill, while a consumer measure, will also be beneficial to honest manufacturers.—*Extracts, see 4, 96.*

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I SHOULD like to present the position which some of us who worked on the proposed new food and drug legislation find ourselves in.

In some instances we undertook the drafting of general standards of conduct. Now we find them too broad; at least, so we are told.

In some instances we endeavored to use specific statements; now we are told they are too rigid.

In some instances we sought to secure both specific rules and flexibility through the use of the administrative machinery of the Government, subject at all times to the control of our courts.

Now we are told that it is bureaucracy and tyranny.

It seems that when you put those three views together, after making proper allowance for the valuable suggestions which have come to us, the result is that there is left open only the drafting of rules which are like silent policemen at street intersections. They do not cover much ground, and they are easy to get around.

I do not think we want that sort of legislation; and yet it seems essential that in some situations there be general standards of conduct, in some situations that there be specific rules; and in some situations where specific regulations can be made under general standards of conduct which the courts can use as a guide in limiting the action of the administration, there should be the grant of administrative power.

This is no novelty in our law, and its exercise would be subject to the same watchful scrutiny of the courts that any other grant of power to administrative officers is subject.

Furthermore, in almost all instances where that grant of power has been given in the bill, it has been accompanied by provision for notice and hearing.

At those hearings effort would be made to bring to the attention of the officer presiding, not only the Department's views, but also ample scientific testimony from whatever source available.

I think I should make also clear that at those hearings after public notice there is and should and would be granted to the industry ample opportunity to be heard and to present its views.

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The Stephens bill (S. 2355), and the Black bill (H. R. 6376), which are identical, do not purport, as in the case of the Tugwell bill, to rewrite the Food and Drugs Act. They purport to be and are amendments to the present Food and Drugs Act.

These bills embody the amendments proposed by the National Drug Trade Conference and which were offered at the hearing before the Senate Sub-Committee by the National Drug Trade Conference through Dr. Beal.

They preserve all of the effective provisions, which have been in force for more than a quarter of a century, to prevent the introduction in interstate commerce of adulterated and misbranded articles of food and drugs. In addition, they will preserve the mass of judicial decisions interpreting the language of that Act.

Under the present law, adulterated and misbranded articles of food and drugs are contraband of commerce. The present law relates, however, alone to the adulteration of food and drugs and to the labeling requirements. This law has been declared by the Supreme Court of the United States, U. S. vs. 95 Barrels 265 U. S. 438, to be plain, direct and comprehensive: that "its comprehensive terms condemn every statement, design and device which may mislead or deceive."

The reasons advanced for the rewriting of the Food and Drugs Act are:

(1) That the present Act does not cover devices.

(2) That it does not include cosmetics.

(3) That advertising is not within its purview.

(4) That because the language of the present statute restricts itself to specific so-called anti-social acts, that "the Government is forced to prove" and "it is ****** open to the manufacturer or shipper to prove that this particular lot ****** may not be deleterious to health if so consumed."

The Drug Trade Conference amendments propose to enlarge the scope of the present law:

(1) By including devices intended for the cure or mitigation or prevention or treatment of diseases.

(2) To include cosmetics and

(3) To bring advertising of food, drugs and cosmetics within the purview of the law.

Thus three out of the four demands of the proponents of the Tugwell bill will be met if the Drug Trade Conference amendments to the present law are enacted.

The Drug Trade Conference amendments, however, do not meet demand of the proponents of the Tugwell bill that the traditional and historical method of enforcing law in this Republic through the courts shall be disregarded and that enforcement be transferred to an Administrative branch of the Government and that industry be controlled by Departmental edict.

Under the old law, which is so plain, direct and comprehensive as to prevent, when enforced, the introduction in interstate commerce of adulterated and misbranded articles of foods and drugs will be equally effective when applied to devices and cosmetics and will be equally effective when applied to advertising.

Under its terms, purchasers will be enabled to buy articles of foods, drugs, including devices, and cosmetics for what they really are, when their identity, kind, character, quality, purity, strength or purpose are declared either upon the label or in the advertisement of such articles and purchasers will be also protected against adulteration of such articles.

Thus these amendments, if enacted, will enlarge the scope of the present law, protect the consuming public with respect to cosmetics and devices and against the false advertising of foods, drugs and cosmetics, in the same manner as the public are now protected with respect to the labeling requirements. No further legislation than this is necessary in this behalf.

Let me again emphasize that the fundamental differences between the so-called Tugwell bill and the bill embodying the Drug Trade Conference amendments are:

(1) The Tugwell bill will, if enacted, destroy the present effective Food and Drugs Act and the judicial interpretations placed thereon.

(2) Ignore the express declarations of the Supreme Court and other courts of the land.

(3) Fill gaps with its own rules, orders and regulations; secure for them the force of a statute; arrange that the decision of the Department shall be conclusive proof; exercise discretion to modify provisions of the law and prevent and avoid appeals to courts of law.

The Drug Trade Conference amendments, if enacted, will preserve intact,

(1) All the fine features of the present law.

(2) Preserve judicial interpretations of the courts, which interpretations will be equally applicable to the new matters by which the present law is enlarged.

(3) Preserve to the legislative branch of the Government its control of legislation.

(4) Provide for enforcement through orderly court procedure.

In the matter of enforcement, the one set of bills propose to overturn, in part, our present form of Government; the Drug Trade Conference amendments will preserve the present form.

In the provision in the Drug Trade Conference bills relating to seizures, there is a specific limitation of the power to cause seizures to be made anywhere at any time. In the past it has been the habit of the Department to cause so-called multiple seizures to be made. These were usually made in remote jurisdictions. Such seizures carried with them the threat of additional seizures in jurisdictions selected by the Department. The practical effect of this method was to deprive persons of property without due process of law. This is not an idle statement. The District of Columbia Court of Appeals in a unanimous opinion made a few years ago, declared that the causing of multiple seizures amounted to a taking of property without due process of law in violation of the Constitution of the United States, except in cases of emergency where drastic action became necessary. This decision preserved to the Government the right in all cases of emergency requiring drastic action to make seizures wherever the articles could be found, but it denied

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There will, therefore, be the opportunity for special consideration of the special problems of industry, and there will be possible a discrimination—in the best sense of the word—in the treatment of these products.

I think that there also has been a tendency somewhat to exaggerate the extent of the granting of administrative discretion in this bill, despite the fact that no one can examine the bill without remarking its frequent appearance.

A more careful comparison of the grants of power may perhaps dispel some of those apprehensions. In many instances the grant is to accomplish a matter of form, more specifically, to set up ways of stating required information, a matter which cannot very well be put into a statute without making it resemble a tariff schedule of a tariff law.

There are also necessary grants of power to establish procedure for the conduct of the hearings, all subject, of course, to the operation of the due process clause of the United States Constitution.

I wish also to point out the fact that some of these grants of power are to exempt industries from the operation of statutory regulations where they may be harsh.

In the case of standards for food products, we have no other way of setting these standards up except, as they are now established under the McNary-Mapes amendment, by administrative action. Whether you want standards or not is another thing, but I do not think that you can regard the standard-making power as an unjustified resort to administrative discretion.

The same thing, I think, can properly be said of the voluntary inspection provision. Whether that is desirable or not, I think the fact remains that it would be very difficult for such a system to be set up without some grant of discretionary power to the Secretary of Agriculture.

Certainly none of us, I suppose, would wish to see the compulsory establishment of an army of inspectors overnight, which would be necessary if there were not in the Secretary's power the power to withhold the extension of this privilege, not from specific individuals, but from classes.

In the cases of tolerances and prohibitions of adulteration of ingredients, a number of persons have brought out the rather obvious fact that that determination is one which is dependent not only on the state of economic knowledge, but on the state of technical processes.

If, in a scientific laboratory, a wash to remove insecticides which was 100 percent effective were invented, taking a case which may seem exaggerated, the effect of such a discovery on the tolerance, of course, would be great.

It would be, in such a circumstance, unreasonable to grant the same liberality in permitting poisons to remain on a product after such a discovery as before.

In other words, here is a situation which cannot very well be handled by statute. The question is whether, after the Secretary has, following a hearing such as I described, set a standard, the industry can rely on that standard being maintained when once it has been passed upon in an appropriate action reviewing it in the courts, or whether the industry is left subject to the fate of a standard in every particular case in which it comes up, in which the Government must prove not merely the violation of the standard but the danger to health of the ingredients on the products.

With regard to the grant of administrative power as to deteriorating drug products, we have a situation in which it seems obvious, not only for the benefit of the consuming public, but also for the advantage of manufacturers to have regulations appropriately indicating when a drug would no longer be useful.

Suppose you have a case where a drug is not properly labeled with such precautionary statements, and it deteriorates. A person uses it, and injury results. Then you would have a damage suit. Is it not better to forestall a thing of that sort by an appropriate precaution in advance?

I do not believe that there have been vigorous objections made to the granting of a discretionary power there.

We could not very well include all the drugs which might be subject to such regulation without having an extended appendix to this measure, which, some have complained, is already too long to be understood, and have, in some instances, given testimony to that accusation by their misinterpretations.

With respect to supplementing the tests to determine the quality of United States Pharmacopœia products, another grant of discretionary power, certainly there would be very few instances of its exercise, especially if the United States Pharmacopœia Convention, a national organization, keep by supplements their standards abreast of medical science.

In the case of narcotics we have a possibility again of exercise of discretionary power. Dr. Beal, I think, made a very valuable suggestion in the addition of the words "habit forming" as qualifying narcotics and hypnotics. It was certainly our purpose that that should be understood. But we cannot hope to anticipate, by an enumeration of drugs in a statute, the progress in the development of such products for I do not know how many years to come.

One purpose in putting in grants of administrative power in a bill of this sort is to enable the legislation to keep abreast of progress, of change in conditions, so that it will not be necessary to resort to congressional action which may itself be a burden on the industry, which may be upsetting, which certainly will be slow. On that point I should like to bring this thought to your attention:

I think there have been five amendments to the Food and Drugs Act of 1906; the last amendment which had any operation with respect to drugs was in 1912. It has been brought to our attention by very candid public-spirited admissions that there are substantial shortcomings and defects in the present legislation. Now, if one quarter of the interest, one quarter of the vigor which has been expressed in opposition to this bill had been expended by the industries themselves in the support of measures in the past to remedy these defects, these Congressional hearings would not be necessary. It seems, therefore, that we cannot hope for militant action on the

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Thompson *Cont'd*

to the Department the right to make seizures and destroy property at its own sweet will.

Even since the announcement of the court in this case, the present attitude of the Department is disclosed in one of its most recent seizures. A single seizure was made, which seizure might have been made at a point where a small manufacturer could have intervened and protected his property against the charges of the Government. The preparation was manufactured in New York State. The seizure was made in the State of California. The Drug Trade Conference amendments provide that before such seizures are made, an opportunity shall be given to the party at interest for a hearing with an opportunity to justify or correct the manufacturer's claims of therapeutic value. There is a distinct provision that in the event the manufacturer fails to justify or refuses to correct them, that a suit must be commenced in a single jurisdiction. There is a further provision, however, that the Government may apply, and upon good cause being shown, secure an injunction to prevent repetitious introduction in interstate commerce of the alleged misbranded article in interstate commerce and in emergency cases, provides that the article may be impounded.

In the matter of advertising, in the Drug Trade Conference amendments, the draftsmen, having in mind that there is absolutely no agreement of medical opinion as to the value and use of drugs in the treatment of diseases and, having in mind the declaration of the Supreme Court of the United States, found in a line of decisions that they who might deny the existence of the virtue of a remedy will only differ in opinion from those who assert it; that there is no exact standard of absolute proof of the efficacy or inefficacy of any treatment and that an advertisement in order to be false must be limited to representations of fact.

If the Tugwell bills are enacted, industries will be destroyed, traditional procedures will be overthrown. But the subject of the law will be governed not by law but by the command of men.

If the Drug Trade Conference bills are enacted, the consuming public will be completely protected by plain, comprehensive and direct law. Property will not be destroyed without due process. Industries may chart their course upon the basis of a law enacted by that branch of the Government of the United States in which the duty of such enactment is vested by the Constitution. American citizens will have a right to their day in court.

▼

by Charles Wesley Dunn

Gen. Counsel, Associated Grocery Mfgrs.

DURING the consideration of the Federal Food and Drugs Act in Congress—and such legislation was considered beginning with 1879 and continuing to 1906—it was very controversial legislation; and then, aside from the controversy as to whether or not there should be such a law, there was a very great controversy as to what the terms of the law should be. This latter controversy involved an indefinite difference of opinion. So when the law was enacted in 1906 it was seriously defective in form, and the seriousness of its enforcement has amply demonstrated that the act contains other defects which require amendment.

So it is not unnatural that in the 27 years of the life of this act it has been amended five times, and numerous other amendments have been proposed to Congress and are now pending before Congress. Hence the legitimate food and drug manufacturing industry of this country must take the sound position that the act does require certain constructive revision, and that the only objection that can be properly offered to this bill is to the question of its form, where that form is objectionable. There can be no objection, as I say, to the major provisions against false advertising, filled containers, and so forth. The objection as to form falls into two classes—first, the objection against unduly broad or indefinite language; and, secondly, an objection against provisions which are unsound in principle and public policy as such.

I will cite two illustrations of the objections that we have in mind. First, as to an objection against the form of this bill upon the ground that it is unduly broad.

I will cite as my illustration section 9 (a). That section relates to false advertising and defines it as a duplicate of section 6 (a) in respect to the label. This section and section 6 (a) provide, in effect, that a food or a drug or a cosmetic is misbranded or falsely advertised if its label or advertisement or ambiguity or inference creates a misleading impression regarding the product.

My objection, and the objections of the industries that I represent, center around that word "impression." An impression is a state of mind, or a reaction, or a feeling, on the part of the purchaser which may be wholly apart from the facts of the advertisement or the label; any purchaser may have an impression, a misleading impression, regarding a product which arises solely out of his own ignorance or his own stupidity or his own misunderstanding or his own misreading, or whatever the situation may be, wholly apart from the fact as to whether or not the label or advertisement is false in fact. So that as a result of this bill in its present form the Government would be empowered to condemn a food label, or a food advertisement, or a drug label, or a drug advertisement, upon the ground that it created a misleading impression in the mind of the consumer and regardless of the fact that the label or the advertisement might be wholly true in fact.

Let me give an illustration. You may get the impression for some reason that I am a thief. Whatever the reason for that impression may be, let us assume that it is an entirely erroneous impression. Upon the theory of this bill I could be put in jail because of your impression. Now, it is perfectly obvious that I should not be condemned for violating a law against thieving unless it is proven in fact that I have stolen. That little illustration goes to the point of our objection against this bill.

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Cavers, *Cont'd*

part of the industries to correct minor defects which is the sort of thing that the grants of discretionary power, by and large, are seeking to accomplish.

Those grants, as I say, are subject to court action. It has been desired that there be an appeal to the courts from their exercise. The regulatory power of an administrative official exercised in this fashion is not an exercise of quasi-judicial function; it is, if I may use the term, quasi-legislative. The hearings which he would hold, are not in the nature of an adjudication of the rights and wrongs of individuals. There is no adversary party, technically, so that it seems impossible that a technical appeal could be taken. I think I can say safely that provision for an appeal from such a determination could not constitutionally be granted to the Federal District Courts of the United States. Very possibly some special tribunal might be established by statute to handle precisely such cases. However, is that necessary? That would depend, it seems to me, on the ease with which a review in the United States Federal courts might be obtained. How can that be done? In any case in which action is taken under such a regulation, its constitutionality may be questioned. It may be asserted as a defense in any prosecution based on a regulation that the regulation is unreasonable, unsupported by evidence, or without the bounds of this statute. No special proceeding has to be brought by the interested party in order to do that, or, as an alternative, he might proceed by injunction and enjoin the enforcement in advance of any wrongful administrative action. I think that at the present time there is an injunction against one of the canning standards which were set up under the McNary-Mapes amendment.

No one can very well make argument that administrative officers never blunder—that there will never be a miscarriage of justice under any legislation. We all, certainly, should be sufficiently realistic to know that it may happen; but is the reason of an occasional, and I think the record of the Food and Drug Administration indicates quite clearly that it would be only an occasional, mistake of that sort, subject to review in the courts, sufficient for this group representing three important industries and their advertising media to object to this measure, which certainly has been endorsed in principle sufficiently, without a very careful examination of the risks not only to the public but to the good will which those industries now enjoy in the public eye.—*Extracts, see 1, p. 96.*

Minneapolis Druggists Association

THE Tugwell bill, if enacted to a law, would curtail the sale of high sounding patent and proprietary medicines.

Some manufacturers of patent and proprietary medicines look for every conceivable outlet, such as grocery stores, dry goods stores, "pine board" and cigar stores, who have no training as to the needs of the public health. If these *medicines* are so potent as to cause the reaction on the human body *as advertised*, why should not the sale of these medicines be restricted to persons who are *college trained* and *professionally educated* to handle these products?

This condition (Tugwell Bill) has been brought about by the manufacturer in his greediness for sales and profit. In his orgy for business, the manufacturer has had no thought for the retail druggist, who should be the only outlet for such products and who originally placed these products on his shelves.

Today, you find dry goods stores, grocery stores, cigar stores, etc., using these highly tooted patent medicines and proprietaries as loss leaders. In fact, selling them to the public as you would sell candy or fruit or other things that are inert as far as medicines are concerned, there being no professional training in the line of education to handle these products.

People should be safeguarded as to public health where their medicinal needs are concerned.

Today, the retail druggist sells few patent or proprietary medicines as there are so many outlets, other than drug stores, that are used by the manufacturer, such as grocery, cigar, confectionery and dry goods stores. These other outlets use the various patent and proprietary medicines as a smoke-screen to further the sale of other merchandise in their own lines of business, such as groceries in grocery stores, dry goods in dry goods store, etc., etc.

The manufacturer is solely responsible for his own condition. After assaulting the retail druggists of this country, he has brought them to a state where approximately 60% or more are insolvent. The druggists have a *right* to help *curtail* these activities when public health is at stake. The manufacturer has used the drug store as a smoke-screen long enough. We must *divorce* ourselves (druggists) from the *spurious advertiser* of medicines. This would require a thorough housecleaning in the retail drug business and it would rid ourselves of the leech (spurious manufacturer) who has used us (the retail druggist) to further his own interests.

The druggists, in working out the problems for their own protection in the future, should recognize the fact that a very small amount of patent and proprietary medicines are sold by the independent retailer, and *when sold*, with *little* or *no profit*.

This is the time for the red blooded American Retail Druggists to exert themselves and fight for their birthright (Pharmacy for Pharmacists), to wake up and work for the passage of the Tugwell Bill.

We are by *law* and *pharmaceutical education* the *true outlet* for medicines. But the manufacturer has seen fit to *divert* our livelihood to other channels. He has allowed his products to be put out by "pine board" stores, grocery stores, and what not, thereby causing the people to change their channel in the buying of drugs.

Let the patent medicines sell on their merit instead of "trimming" the public with spurious advertised merchandise. The radio, magazine and newspaper has been the manufacturer's appeal to the public. With the passage of the Tugwell Bill, the druggist will have to be their appeal.

This will return to pharmacy honest merchandise with merit and rebut spurious advertised merchandise.

Dunn, *Cont'd*

We believe the provisions here as to both the label and the advertisement should be written in somewhat this form: That a label or an advertisement is false if it is false or injuriously misleading in fact in any material particular relating to the purposes of the act. That is a sound public policy and a sound declaration which is entirely equitable, so far as the industry is concerned, and amply answers the public need against false advertising and false labeling.

I believe that so far as false advertising is concerned, the amendment should run somewhat in this fashion; should condemn an advertisement as false where it is false or injuriously misleading in a material particular relating to the purposes of the act.

Of course, if this is a material particular it should not be considered. If it is not related to the purposes of the act it should not be considered. But if this touches in fact the consuming public of this country it should be condemned.

Those are sound principles of food and drug law control which have been laid down for years in this country.

Now, I go to the second broad objection against this bill, namely, the insertion of provisions which are unsound in principle and public policy in our view, and I will cite as an illustration of our objection the provision which runs throughout this bill from start to finish giving the Secretary of Agriculture practically unlimited administrative power which has the full force and effect of law.

Now, that provision reverses completely the public policy of the present act and, broadly speaking, reverses the public policy of the food and drugs law of this country as it has existed down to this time. It also is directly contrary to the public policy expressed by the British Food and Drugs Act and the Canadian Food and Drugs Act. For example, the public policy of the present act is substantially this: To set up a general requirement in the act with which the manufacturer must comply; and, on the other hand, to give the Secretary of Agriculture administrative power to enforce that requirement; but when he comes into court the burden of proof is upon the Government to establish that the law has been violated. That is the present public policy of the present act and it is the public policy that has existed from the very beginning with respect to the food and drugs law of this country, generally speaking.

The public policy of the proposed bill is just the reverse of that. It is to give the Secretary the power broadly to make administrative findings and decisions in the administration of the act, which findings and decisions shall have the force and effect of law. So that when a manufacturer or other person who is charged with the violation of this law goes to court, instead of the burden of proof being upon the Government to establish that he has violated the statute, according to the rules of evidence, he is faced with the situation where the burden of proof is upon him to establish that the administrative decision or finding of fact is wrong.

Now, the decisions of the United States Supreme Court have very broadly sustained administrative power with respect to decisions and findings of fact; and it is almost impossible, in a practical sense, broadly speaking to everywhere get those administrative decisions and findings under a broad statutory power.

So that the effect of the whole thing with respect to this provision is to substitute the opinion of the Secretary of Agriculture for the judgment of the court or the jury in the final analysis.

We believe that is a fundamentally unsound policy; that it is not consistent with the principles of the common law, with the principles of the law as it has been developed in this country, and that it is not a proper provision to write into this act.

I think I express the opinion of the legitimate food-manufacturing and drug-manufacturing industries of the county when I say that it is our duty at this time to constructively cooperate with the committee and with the Government to revise this bill, simply to make its form sound, and at the same time to preserve its high purposes of protecting the public health and safeguarding the public health from injurious foods and drugs.—*Extracts, see* 1, *p.* 96.

AFTERMATH:—

● Progress of Problems Discussed in Special Features of Preceeding 1934 Numbers of the Digest

Gold

(January, 1934)

On Tuesday, January 30, the President signed the Gold bill and on January 31 issued a proclamation, under authority granted him in the bill, revaluing the dollar at 59.06 cents. At the same time the Secretary of the Treasury announced that on February 1 he would begin buying, through the Federal Reserve Bank of New York as fiscal agent for the government, "any and all gold offered" at the price of $35.00 an ounce. On February 1 the government began putting the gold bill into full operation. It took title to approximately $3,567,000,000 of gold held by the Federal Reserve banks and started preparations to print the gold certificates to be delivered to the reserve banks in exchange for their gold holdings.

The government also began operation of the two billion dollar stabilization fund, authorized by the gold bill, to control the value of the dollar in relation to the currencies of other nations in the money markets of the world. This fund is provided from the profit accruing to the government through acquiring title to the gold held by the reserve banks. This gold is now being valued at about $2,792,800,000 more than the government is paying for it in gold certificates.

The question of the Constitutional right of the Federal government to seize the gold of the Federal Reserve banks was raised in Congress. The President and his advisers maintain that there is ample Constitutional authority, while Senator Glass holds that it is confiscation of private property, which is forbidden by the Constitution. Officials of the Federal Reserve System maintain that the government is entitled to the profits on their gold holdings, caused by the Treasury's value-raising policy, but if the gold itself was to be seized they believed Congressional authority was necessary. They have not expressed themselves on the constitutional question involved.

One of the more important benefits the government expects to derive from profits gained through the increased value of the Federal Reserve gold is an equalization fund of $2,000,000,000 to be taken from these profits, set aside, and used to control the value of the dollar abroad. Great Britain has used such a fund effectively to regulate the British pound in foreign markets since she went off the gold standard, thereby preventing her overseas trade from becoming unduly disturbed. If the pound showed a tendency to go too high, in terms of the French franc, the British government bought francs. If it went too far in the other direction, the British government sold francs.

Operation of the equalization fund will be in the hands of the Secretary of the Treasury but the actual transactions will probably be made by Federal Reserve banks.

Under the new bill, the Gold Reserve Act of 1934, passed January 30, 1934, all gold must go to the Treasury. Before this law was passed the Treasury owned about one-half of the nation's supply of gold, but it actually had physical possession of more than three-quarters of it. This gold was held principally in the Treasury's six secure vaults throughout the country located in the mints at San Francisco, Denver, and Philadelphia, and in the Federal Assey offices at New York, New Orleans, and Seattle. Very little gold has heretofor been held in the Treasury at Washington. Altogether the vaults of the Treasury were holding approximately 3 billion 200 million dollars worth of gold only one-half of which belonged to the Treasury, most of the remainder belonging to the Federal Reserve Banks.

The remaining one-third, not held in the Treasury vaults, was generally held by the Federal Reserve Banks, commercial banks and by individuals.

Gold was divided between the Federal Reserve Banks and the R.F.C. The Federal Reserve Banks held $811,000,000 worth, $406,000,000 of which was held in the New York bank, $135,000,000 in Chicago bank, $93,000,000 in the San Francisco bank, and the remainder scattered among the other nine Reserve banks.

Gold owned by the R.F.C. amounting to about $130,000,000 was largely in foreign vaults. The $811,000,000 in Federal Reserve banks will be brought into the Treasury. The R.F.C. gold will probably be held in the New York Assay office, as it comes in from Europe. Gold turned in by hoarders at their banks will flow through the Federal Reserve banks into the Treasury.

In return for the gold taken from the Federal Reserve banks the government will issue a new type of gold certificate in return for the gold. These new gold certificates will not circulate; they will be held almost exclusively by the reserve banks and will not be redeemed unless such redemption is necessary to keep their value on a par with other types of currency.

On December 28 the acting Secretary of the Treasury started a new anti-hoarding drive to nationalize all gold holding regardless of their size. The result has been a flow of antiquated one dollar gold pieces, two dollar-and-a-half pieces given as keep sakes, and anonymous remittances of gold, since the new drive started.

Federal Funds in Education

(February, 1934)

SINCE the publication of the February number of the DIGEST the following steps have been taken in the campaign for Federal aid in education:

Harry L. Hopkins, director of the Federal Emergency Relief Administration (FERA), has announced a six-point program which his organization will follow in distributing funds for educational aid.

Previously it had been announced that approximately $2,000,000 a month would be expended by the Government through June, 1934, in emergency aid in education. Mr. Hopkins' six-point program and his official announcements as to how the program is to be carried out will be found below.

On February 26 the House Committee on Education began hearings on the various bills before it providing for the expenditure of Government funds in aid of education.

The hearings opened with the appearance of Mr. Hopkins who informed the committee that if Congress desired that more Federal funds should be used to aid education in the various states, it should appropriate money especially for that purpose instead of having the Civil Works Administration or the Federal Emergency Relief Administration increase the present allotment of $2,000,000 a month.

Mr. Hopkins was followed by James H. Richmond, State Superintendent of Education, Kentucky, and Chairman of the National Committee for Federal Emergency Aid in Education, who is in charge of the presentation of arguments to Congress for the immediate goal of obtaining an appropriation for emergency aid.

Other state superintendents and members of non-educational organizations supporting the emergency Federal aid program will follow Mr. Richmond.

The Committee on Education has set aside the entire week of February 26 for the proponents and opponents of emergency aid.

Apparently the efforts are to be directed at obtaining an appropriation of $100,000,000 for emergency aid for the fiscal year 1934-35.

The bill introduced by Senator Black of Alabama, published in the February DIGEST, provided for $50,000,000 for the remainder of the current year and $100,000,000 for next year.

Expenditure by the FERA of $2,000,000 per month is apparently all that can be expected for the remainder of this year and those members of Congress who are sympathetic with the general proposal for Federal emergency aid appear to feel that it is wise to concentrate on $100,000,000 for next year. It is not probable that the question of permament Federal aid will be raised.

Until the hearing is concluded and the Committee on Education takes up consideration of the problem, further predictions as to the actual progress of the campaign are impossible.

In his opening presentation of the case, Mr. Richmond summarized the arguments of the National Committee for Federal Aid in Education as follows:

"A federal appropriation of at least $100,000,000 is needed as emergency aid for schools in 1934-35. Such action, to be effective, must be taken by the present Congress. Action deferred until January, 1935, will be too late; it will invite repetition of the denial of adequate schooling which has occurred during the present school year.

"A good school must be planned well in advance. School authorities need several months in which to prepare for a school term. In no other way can wise and economical spending of school moneys be assured. Time is needed properly to select teachers and to enter into contracts with them, to purchase necessary equipment and supplies, and to put school buildings in order. Time must be allowed also during which districts can demonstrate their need for assistance to the state and federal authorities charged with the administration of emergency-aid funds.

"The important reasons why emergency federal aid for schools will be needed in 1934-35 are:

"1. School revenues in 1933-34 have been seriously reduced.

"2. School opportunities in 1933-34 have been inadequate or lacking.

"3. Federal aid granted this year has been the only means of keeping many schools open.

"4. Enrolments next year will show significant increases.

"5. Property taxes, the chief source of school revenue, will be inadequate in 1934-35.

"6. State school funds for 1934-35 will not offer sufficient relief to depleted local resources.

"7. Further state and local borrowing for school support is impractical.

"8. Reports from most of the states indicate falling school revenues for 1934-35.

"9. Reports from most of the states indicate urgent need for federal emergency aid next year."

The Federal Government, through the Federal Emergency Relief Administration, is proceeding with aid to education along the lines laid down in the six-point program announced by Federal Relief Administrator Hopkins on February 6, in which Mr. Hopkins summarized educational emergency relief activities as follows:

1. Extension of rural elementary schools in communities under 2,500 population.
2. Teaching adults to read and write English.
3. Giving vocational training to unemployed adults.
4. Rehabilitation training for physically disabled adults.
5. General education for unemployed and other adults.
6. Nursery schools for preschool children from the homes of needy and unemployed adults.

Prior to this, on February 2, Mr. Hopkins issued a statement (E-14) on the extension of Government funds for rural schools, the text of which follows:

"To provide relief for more unemployed teachers, additional relief funds have been made available for the remainder of the school year, extending to June 30, 1934. These funds will be used to pay the salaries of unemployed

teachers who may be used to teach in elementary and secondary schools in communities up to 5,000 population, according to the 1930 census, where the districts have made the maximum financial effort and are still obliged to close short of a normal length of school term. These additional funds are over and above the $2,000,000 per month at present allocated to the emergency educational programs, and will be under the same administrative set up as the other educational projects under the approved State plans.

"These additional funds may be used in payment of the salaries only of certificated teachers for teaching the regular school work already under way this school year to maintain elementary and secondary schools in such areas and localities for the normal school term, with approximately the same teaching load as the present school year, on and after the date upon which the school had been discontinued for lack of its own funds, and in no case earlier than February 1.

"Teachers already employed in the schools, whose sole source of income is their salary, may be continued in their positions. Under similar conditions, these emergency relief funds may also be used to employ properly certificated persons in schools which have already closed or have not been open this year. All teachers who receive compensation from those funds shall be selected by the appropriate school authority and, after certification by relief authorities as to their unemployment status, be assigned to their tasks by such school authority.

"The pay of the teachers shall not be higher than that stipulated for the same positions during the current year.

"These funds cannot be used for administration, supervision, clerical or janitorial services, or for maintenance, equipment, or supplies.

"None of these funds can be used to pay back salaries due, or to redeem warrants, script or other evidence of debt.

"Relief teachers paid from these funds may not be used to relieve so-called overcrowded conditions in classrooms or to introduce additional subjects or activities in the school.

"Allocations to the States shall be made on the basis of affidavits by the chief school officers of the States, setting forth—

"*a.* The number of school districts in rural areas and towns under 5,000 population which will have to close their schools short of the normal term, having previously made a maximum financial effort.

"*b.* The number of teachers required in those districts to keep the schools open with the same teacher load as prevailed during the present school year.

"*c.* The number of teacher-months required to keep the schools open for a normal term.

"*d.* The pay of the teachers for the period involved.

"*e.* Supporting evidence giving the data used in determining which districts are entitled to aid, including particularly evidence bearing upon the financial effort exerted by the district.

"This affidavit shall bear the approval of the State relief administrator in charge of the funds earmarked for education.

"The United States Office of Education will cooperate with the Relief Administration in helping to determine the amount of funds to be made available to the several States."

Questions as to the interpretation of the rural school authorization arose promptly, and on February 6 Mr. Hopkins issued a second statement, referred to above, in which he interpreted his statement of February 2 as follows:

"The six projects which have been authorized are (1) Extension of rural elementary schools in communities under 2,500 population to a normal length school term; (2) teaching adults to read and write English; (3) giving vocational training to unemployed adults; (4) rehabilitation training for physically disabled adults; (5) general education for unemployed and other adults; and (6) nursery schools for preschool children from the homes of needy and unemployed adults.

"The release (E-14, Feb. 2) merely makes additional funds available for the first project so that it can be taken care of in a more adequate way than at present. It also considerably liberalizes the definition of 'need of relief' as applied to teachers, and extends the scope of the first project so as to permit the employment of teachers in both elementary and secondary schools in communities up to 5,000 population.

"If a State which was operating an emergency educational program under relief funds was using a part of its educational grant prior to February 1st to keep rural schools open, it will continue to expend such portion of its monthly allotment for rural schools, liberalized in terms of the new release, and will receive an additional allotment in order to take care of such elementary and secondary schools in communities up to 5,000 population as cannot be taken care of with the regular allotment to the State earmarked for education. In other words, the additional funds may not be used to relieve the regular monthly grant of its present expenditure for rural schools, which would in effect increase the monthly allotment for the other five projects.

"The first educational project is the only one in which unemployed teachers may be assigned to teach in the regular public schools. Please note that they may be used only to teach the regular school work with approximately the same teaching load as the current school year. Accordingly, it is not permissible to use relief funds, either as an educational project, or as a Civil Works Service project, to place teachers in classrooms to relieve so-called 'overcrowded conditions,' as 'helping teachers,' or to teach music, recreation, or other activities in the regular public schools which have not been provided during the current school year by the school system. The one purpose in providing teachers employment in the regular public schools in communities under 5,000 population is to prevent their closing short of a normal length of school term."

On February 2 Mr. Hopkins sent the following letter to State Emergency Relief Administrators regarding the use of Government funds for part-time jobs for college students:

"This letter will authorize and direct you to make relief funds available:

"1. For a program of part-time employment for college students from this date to the end of the current academic year, but not including the summer session of 1934.

"2. All institutions of a collegiate or university character (hereinafter called colleges) which desire such aid, shall be included, provided they are nonprofit making as

attested by the fact that their regular educational buildings and grounds are exempted from the property tax levied by the State and/or local community. In case of question the State department of education in each State shall determine which institutions meet the above requirements.

"3. Jobs shall be allocated for the colleges on the basis of their enrollment of full-time students of college grade as of October 15, 1933. A full-time student is one carrying at least three-fourths of the normal student program of courses. The allotment of jobs for each college will be equal to 10 per cent of its full-time student enrollment.

"4. The pay shall be from $10 to $25 per calendar month per student employed and shall be earned by socially desirable work. The allotment to each college shall be based on an average of $20 per month per student employed.

"5. A special allotment of funds by the Federal Relief Administration shall be made to each State on application of the Governor. This application shall be accompanied by an affidavit by the president of each institution desiring to participate in the fund. Such affidavit shall carry the endorsement of the chief State school officer of the State and of the State relief administrator—

"(*a*) That the institution is of a collegiate or university character, i.e., that it requires at least the equivalent of high-school graduation for admission of regular students to its principal curricula;

"(*b*) That the institution is nonprofit in character as attested by the fact that by its charter its regular educational property is exempt from taxes;

"(*c*) That its full-time student enrollment on October 15, 1933, was ——, that 10 per cent of such enrollment is ——, and that the monthly allotment requested is $ ——, based upon the $20 average per student to be employed.

"(*d*) That if granted an allotment of student employment funds he will undertake to guarantee that the work projects upon which students will be employed will conform with the stipulation in paragraph 6 below; and

"(*e*) That the students for employment will be selected in accordance with paragraph 7 below;

"(*f*) That the institution will waive all fees for registration tuition, laboratories and/or any other purpose for students working under this arrangement.*

"6. The types of work for which the funds thus allotted may be used cover the range of jobs customarily done in the institution by students who are working their way through college, including clerical, library, research, and work on buildings and grounds, and in dormitories and dining halls, but excluding regular class instruction; except that for institutions not under public control, construction and repair projects if carried on must be on nearby public property and carried on by the State or local C. W. A. authorities. The institution shall be the final judge as to the acceptability of projects carried on within the institution. All jobs must be under the direct charge of the institution except the construction and repair projects noted above, carried on with the cooperation of the local C. W. A. So far as possible, the allotment shall provide jobs in addition to those being now provided by the institution.

"7. The students shall be selected for the jobs on the following considerations:

"(*a*) *Need.*—The student's financial status shall be such as to make impossible his attendance at college without this aid.

"(*b*) *Character and ability to do college work.*—The students shall be of good character and judged by the usual methods of determining ability employed by the particular college, shall possess such ability as to give assurance that they will do high grade work in college.

"(*c*) *Status as to present attendance.*—Not more than 75 percent of the funds allotted to any institution shall be paid to students who were regularly enrolled in some college during January 1934.

"(*d*) *Equitable division between sexes.*—Jobs shall be allocated between boys and girls in proportion to the enrollment of each.

"8. The hourly rate of pay shall be such as is commonly paid by the institution for the type of service rendered but not less than 30 cents an hour.

"9. No student shall work more than 30 hours in any week or 8 hours in any day.

"10. The president of each institution shall be appointed a representative of the State administrator and will certify each week the pay roll of students employed giving for each student the name, the type of work done, the hourly rate of pay, the number of hours worked and the amount due.

"11. The State administrator on receipt of the certified pay roll of students from the president of the institution, shall see that each institution stays within its allotment and shall transmit the student checks to the president of the institution to be delivered to the students by him.

"(**February 5. Due to legal requirements in many States, requiring fees to be paid by all students, paragraph 5, section (f), is hereby rescinded*)."

On January 31 Dr. L. R. Alderman, Director of Emergency Educational Program, F. E. R. A., sent to State Administrators the following letter on emergency classes in commercial subjects:

"Numerous complaints are beginning to be received here to the effect that emergency educational classes in commercial subjects, such as shorthand, typewriting, bookkeeping, accounting, comptometer operating, filing, etc., as they are being organized in various cities, are 'open to all comers' who may wish to enroll. Specific instances have been cited where high-school teachers and other classes of people regularly employed are enrolled in these classes.

"May I call to your attention the fact that Mr. Hopkins' release (A-3L of Sept. 26) which authorized the use of relief funds to employ needy unemployed persons qualified to teach vocational subjects, limited the scope to 'unemployed adults who are in need of vocational training or adjustment to make them employable.' There was no intention, in authorizing the use of relief funds, to provide training in skills and technical knowledge of value in wage-earning pursuits, to duplicate or supplant work being acceptably carried on by public and private agencies. The authorization expressly limited the work to a class of under-privileged unemployed adults who could not pay tuition in any public or private school for such training.

"Will you please notify all centers conducting commercial classes to at once clear their class rolls of all but *unemployed adults.*"

The 73d Congress « « Now in Session

Duration—March 4, 1933-*March* 4, 1935. *First Session Convened March* 9, 1933; *Adjourned June* 16, 1933. *Second Session Convened January* 3, 1934.

In the Senate

Membership
Total—96

60 Democrats | 35 Republicans | 1 Farmer-Labor

Presiding Officer
President: John N. Garner, D.
Vice-President of the United States

Floor Leaders

Majority Leader: Joseph T. Robinson, Ark., D.
Minority Leader: Charles L. McNary, Ore., R.

Officers

President Pro Tempore
Key Pittman, Nev., D.

Secretary
Edwin A. Halsey

Sergeant at Arms: Chesley W. Jurney
Chaplain: Dr. ZeBarney Thorne Phillips, D. D.

In the House

Membership
Total—435

313 Democrats | 115 Republicans | 5 Farmer-Labors | 2 Vacancies

Presiding Officer
Speaker: Henry T. Rainey, D.
Member of the House from Illinois

Floor Leaders

Majority Leader: Joseph W. Byrns, Tenn., D.
Minority Leader: Bertrand H. Snell, N. Y., R.

Officers

Clerk of the House
South Trimble, Ky.

Sergeant at Arms
Kenneth Romney

Doorkeeper: Joseph J. Sinnott
Chaplain: Rev. James Shera Montgomery, D. D.

Progress Made by Major Legislation

From January 20 to February 20, 1934

GENERAL discussion in the press and over the radio of the achievements of the first year of the Roosevelt New Deal; the cancellation of the commercial aircraft mail carrying contracts, charges of graft in the letting of War Department contracts and the reduction of emergency employment under the Civil Works Administration served, during the month of February, to distract attention from the actual proceedings of Congress and the progress of major legislation.

Most of the flurry around the Capitol has been caused by what was happening in committee hearings, since from the committee rooms were emanating the sensational matters, such as the cross examination of Postmaster General Farley and former Postmaster General Brown, by the special Senate Committee investigating steamship and air mail contracts, while at the executive end of Pennsylvania Avenue, which expression is used in Washington to include the White House and the Executive Departments, as distinguished from Congress sitting on Capitol Hill, have come the official intimation from the White House that Col. Charles A. Lindbergh was seeking publicity when he protested to the President against the cancellation of all the air mail contracts, and the meeting of General Hugh Johnson, administrator of N.R.A., with critics of that organization.

In the meantime Congress has been working on appropriation bills and considering legislation authorizing the President to employ the army in carrying air mail for another year; the tax bill, the St. Lawrence Waterway Treaty, and additional legislation for enforcement of the program of the AAA.

Until late in February it had been the general assumption that Congress would finish up its work and adjourn about April 15. It was felt that the President would as soon have Congress out of the way and that all the members of the House and those members of the Senate who are up for reelection this year were equally anxious for an early adjournment, in order that they might get home and organize their campaigns.

Suddenly, however, developments came which upset these calculations and it now seems probable that Congress will remain in session well into the summer.

The first of these was the uprising in both houses on the soldier bonus question. Apparently those seeking the restoration of some of the benefits for veterans, abolished by executive order of the President in the interests of governmental economy, have enough votes in the Senate to attach to the Independent Offices Appropriation bill amendments effecting the restoration.

How far they will go and what proportion of the abolished benefits will be restored cannot be foretold at this time, but the battle is nearing a climax and it seems safe to predict that there will be some sort of showdown before the Independent Offices Appropriation bill is finally passed and sent to the President for signature.

There are two opinions at the Capitol as to what will eventually happen. One is that the President, working with the tremendous Democratic majority in the House, will effect some sort of a compromise which will warrant his signing the bill when it is laid before him. To do this he might prevail upon Congress to scale down its demands for veterans to a point where he could gracefully yield.

The other opinion is that the President will veto the bill, hold enough Democrats in line to sustain his veto and thereby force Congress to back down on its demands for the veterans.

Adherents of this opinion feel that by this course the President will permit individual members of the Senate and House to square themselves with the veteran constituents while he takes the blame, counting on his national popularity to save the Senators and Representatives at home, since they can go back and say they made the best fight they could for the veterans but that, after all, they had to support the President.

In times like those of the present, a popular President has an overwhelming advantage over members of Congress because, in any controversy, with his vastly superior publicity machinery, he can bring his side of the case home to every nook and cranny of the country before an individual member of Congress or even a good sized group of them can get started.

And, on top of the avalanche of publicity, he can turn on, a President always has a vast supply of patronage to dispense or withhold, as the case may be.

During the past year there have been but two instances in which the White House did not get the best of it as far as publicity is concerned. The first was in the case of Colonel Lindbergh, when public opinion appeared at least equally divided, and the second was when the President, in signing the newspaper publishing code, took the newspapers to task for demanding that the Constitutional provision for freedom of the press be written into the code.

In almost every newspaper in the country appeared editorials cracking back at the President for objecting to cite the Constitution in the code.

It is highly probable, however, that the legislative problems mentioned above could all be easily ironed out in time for a Congress to adjourn by the middle of April.

But on top of them has come an authoritative indication, as the DIGEST goes to press, that the President is to ask Congress for authority to lower or raise the tariff 50 per cent in an endeavor to arrange reciprocal tariffs with various nations, and for authority to deal with the foreign debt situation, which is, of course, more or less wrapped up with the tariff and international currency problems.

The tariff question, naturally, has a tremendous bearing on the recovery problem, while foreign debts have always been a sore spot in Congress.

That these two requests of the President will be granted without a bitter struggle in both houses seems improbable. Particularly will the Senate take plenty of time to consider them, no matter what the House may do.

In the House a Democratic vote to give the President power to raise or lower tariff rates will be a complete reversal of a House vote taken in January, 1932, when the Democratic majority passed the Collier bill, introduced by Representative J. W. Collier of Mississippi, chairman of the Committee on Ways and Means, which provided that the Tariff Commission should thereafter report to Congress and not to the President and that Congress, alone, should put into effect changes in the tariff recommended by the Commission. This bill did away with the flexible provisions of the tariff law, long in effect, and left the President only the power to approve or disapprove tariff changes as provided in bills passed by Congress.

The House passed the Collier bill, but the Senate refused to accept it and it was dropped.

That the House will accede to the wishes of the President in the matter of power to fix reciprocal tariffs is generally expected, although there will be opposition. In the Senate, however, the fight will be much harder and will undoubtedly prolong the session.

Appropriations

Independent Offices—(H. R. 6663) Reported to the House, January 10; passed by the House, January 12; reported to the Senate, February 12 with a total appropriation of $588,001,548.

Interior Department—(H. R. 6951) Reported to the House, January 16, passed by the House, January 17; reported to the Senate, February 10 with a total appropriation of $32,382,429.

Treasury and Post Office—(H. R. 7295) Reported to the House, January 24; passed by the House, January 26, with a total appropriation of $820,790,221.

State, Justice, Commerce and Labor—(H. R. 7513) Reported to the House, January 31; passed by the House, February 6, with a total appropriation of $841,346,222.

Civil Works Administration

On February 15 signed H. R. 7527 appropriating an additional $950,000,000 which he is authorized to use for the C.W.A. Relief Administrator Hopkins informed the House Committee on Appropriations that it was planned to terminate the C.W.A. on May 1, or shortly thereafter, and that he would begin laying off men about the middle of February at the rate of about 250,000 a week. Mr. Hopkins said the program called for the use of only about $450,000,000 of the fund.

The remaining $500,000,000 is intended for direct relief during the summer and autumn, but the President is given authority to use part of the money for civil works projects if he decides it is desirable to prevent too many men from being thrown out of work again because industry was not ready to absorb them.

The President indicated that he opposed a larger appropriation because he is anxious to have the total appropriations at this session of Congress confined within his budget recommendations. He asked for $1,166,000,000 additional emergency funds to carry the government to the end of the present fiscal year on July 1, and $2,000,000,000 for the next fiscal year.

Government Salaries

On February 21 the Senate by a vote of 41 to 40 adopted an amendment to the Independent Offices Appropriation Bill providing for full restoration of the regular scale of pay of all Government employes which was cut 15 per cent by Executive Order of President Roosevelt. Under the terms of the Senate amendment, offered by Senator Patrick A. McCarran, Democrat, of Nevada, 5 per cent of the pay will be restored as of February 1 and the entire 15 per cent on July 1.

It is anticipated that the House will agree to the restoration, but no word has come from the White House as to whether the President will accept it.

Navy

On February 2 the House passed H. R. 6604, by Representative Carl Vinson, of Georgia, authorizing replacements of obsolete ships of the Navy and declaring the policy of the United States to be to maintain the Navy at whatever limits may be established by international agreement.

The Vinson bill authorizes construction of 102 new naval ships. It leaves in the President's discretion when he shall request appropriations to begin the various units. Building expenditures under the bill, according to Representative Vinson, would approximate $380,000,000. Mr. Vinson advised the House that Japan already is up to treaty strength and Great Britain's policy is to be up to treaty strength by 1936.

On February 10 the Senate passed H. R. 7199, the naval appropriation bill, which had been passed by the House on January 24. The bill carries a total appropriation of $284,000,000. The Senate increased by $115,000,000 the amount carried by the bill as it passed the House, and made other minor changes. If the House objects to the Senate amendments, the bill will be sent to conference.

Reconstruction Finance Corporation

On January 20 the President approved the bill extending the life of the Reconstruction Finance Corporation until February 1, 1935, or such earlier date as the President may fix by proclamation. (Pub. Law, No. 84).

The primary purpose of the Act is to extend the functions of the Reconstruction Finance Corporation until February 1, 1935, or such earlier date as the President may fix by proclamation, and to postpone the liquidation and winding up of its affairs during whatever period the functions of the Corporation are continued.

The bill also provides that no disbursement shall be made by the Corporation on any commitment or agreement to make a loan or advance after the expiration of 1 year from the date of the commitment or agreement, but the termination by law of the functions of the Corporation within such period is not to be considered to prohibit disbursements on prior commitments or agreements.

In order to enable the Corporation to continue its activities during the period for which its life is extended by the Act and to provide additional funds for expenditure in connection with tasks upon which the Corporation is already engaged, the Act provides for increasing the borrowing power of the Corporation under section 9 of the Reconstruction Finance Corporation Act, as amended, by $850,000,000.

St. Lawrence Waterway

On January 11 President Roosevelt sent a special message to the Senate, urging the prompt ratification of the St. Lawrence waterway treaty with Canada. He expressed the conviction that building the waterway "will not injure the railroads or throw their employees out of work, that it will not in any way interfere with the proper use of the Mississippi River or the Missouri River for navigation." Moreover, he argued, all the needs of the Chicago drainage district have been safeguarded. In the message he expressed the opinion that Canada may, and probably would, build the waterway if the United States declines to join her in the project; predicted the project would give work to thousands of unemployed, and cited the advantages of the proposed electric power development.

Every Senator from an Atlantic seaboard State north of Virginia, except the two from Vermont, and including the two Senators from New York, as well as those from States in the Mississippi Valley are opposed to ratification.

In the debate in the Senate on January 11, 16, and 19, Senator Pittman opened the fight for ratification. Since then Senators Vandenberg and Shipstead have been leading the fight. Senator Wagner, one of the President's most loyal and hard hitting lieutenants, is bitterly opposed to the treaty.

No date has been set for a vote on the ratification resolution.

In the House the waterway treaty was debated on January 17, Republican leader Bertrand H. Snell coming out strongly in its favor.

Taxes

On February 21, the House by a vote of 388 to 7, passed the Administration's internal revenue bill, H. R. 7835, "The Revenue Act of 1934."

This measure is designed to raise a revenue of $258,000,000 and contains provisions specifically designed to prevent tax evasions. Except for a few minor amendments designed to clarify the language and accepted by the Ways and Means Committee, all efforts to alter the bill on the floor of the House were defeated. Republicans attempted to add an amendment restoring two-cent letter postage, but the Postmaster General was quoted as being opposed to this and the motion was defeated. The emergency postal rates now in effect produce an annual revenue of $75,000,000, and Democratic leaders announced that if this were stopped by a reduction of postage some other form of tax would have to be adopted to make up for the loss.

The new tax bill, which, after being sent from the House to the Senate, was referred to the Senate Committee on Finance.

The measure substitutes a flat 4 per cent normal income tax rate for the present 4 and 8 per cent rates. Surtax brackets are reduced to 28, with the surtax starting with 4 per cent on incomes from $4,000 to $8,000, and rising to 59 per cent on $1,000,000 and over.

On recommendation of the Treasury, a 10 per cent deduction credit for earned income up to $8,000 is provided in the bill.

Although first class mail rates are continued, lower second class rates in force before 1932 are restored.

As a penalty for filing consolidated returns, concerns choosing this method must pay a 2 per cent additional tax.

Capital losses are strictly limited to capital gains in the measure, a 35 per cent tax is imposed on undistributed income of personal holding companies, and partnership laws are tightened to curtail reductions from personal returns.

New taxes imposed in the bill include a one-fifth per cent tax per barrel on lubricating oil to forestall "bootlegging, and 5 cents a pound tax on cocoanut and sesame oils.

Tariff

On March 2 the President sent the following message to Congress asking authority to enter into trade agreements with foreign nations:

"I am requesting the Congress to authorize the Executive to enter into Executive commercial agreements with foreign nations; and in pursuance thereof within carefully guarded limits to modify existing duties and import restrictions in such a way as will benefit American agriculture and industry.

"This action seems opportune and necessary at this time for several reasons.

"First, world trade has declined with startling rapidity. Measured in terms of the volume of goods in 1933, it has been reduced to approximately 70 per cent of its 1929 volume; measured in terms of dollars, it has fallen to 35 per cent. The drop in the foreign trade of the United States has been even sharper. Our exports in 1933 were but 52 per cent of the 1929 volume, and 32 per cent of the 1929 value.

"This has meant idle hands, still machines, ships tied to their docks, despairing farm households, and hungry industrial families. It has made infinitely more difficult the planning for economic readjustment in which the Government is now engaged.

"You and I know that the world does not stand still; that trade movements and relations, once interrupted, can with the utmost difficulty be restored; that even in tranquil and prosperous times there is a constant shifting of trade channels.

"How much greater, how much more violent is the shifting in these times of change and of stress is clear from the record of current history. Every nation must at all times be in a position quickly to adjust its taxes and tariffs to meet sudden changes and avoid severe fluctuations in both its exports and its imports.

"You and I know, too, that it is important that the country maintain a rounded National life, that it must sustain activities vital to National defense, and that such interests can not be sacrificed for passing advantage. Equally clear is the fact that a full and permanent domestic recovery depends in part upon a revived and strengthened international trade and that American exports can not be permanently increased without a corresponding increase in imports.

"Second, other governments are to an ever-increasing extent winning their share of international trade by negotiated reciprocal trade agreements. If American agricultural and industrial interests are to retain their deserved place in this trade, the American Government must be in a position to bargain for that place with other governments by rapid and decisive negotiation based upon a carefully considered program, and to grant with discernment corresponding opportunities in the American market for foreign products supplementary to our own.

"If the American Government is not in a position to make fair offers for fair opportunities, its trade will be superseded. If it is not in a position at a given moment rapidly to alter the terms on which it is willing to deal with other countries, it can not adequately protect its trade against discriminations and against bargains injurious to its interests. Furthermore, a promise to which prompt effect can not be given is not an inducement which can pass currently at par in commercial negotiations.

"For this reason, any smaller degree of authority in the hands of the Executive would be ineffective. The executive branches of virtually all other important trading countries already possess some such power.

"I would emphasize that quick results are not to be expected. The successful building up of trade without injury to American producers depends upon a cautious and gradual evolution of plans.

"The disposition of other countries to grant an improved place to American products should be carefully sounded and considered; upon the attitude of each must somewhat depend our future course of action. With countries which are unwilling to abandon purely restrictive national programs, or to make concessions toward the reestablishment of international trade, no headway will be possible.

"The exercise of the authority which I propose must be carefully weighed in the light of the latest information so as to give assurance that no sound and important American interest will be injuriously disturbed. The adjustment of our foreign trade relations must rest on the premise of undertaking to benefit and not to injure such interests. In a time of difficulty and unemployment such as this, the highest consideration of the position of the different branches of American production is required.

"From the policy of reciprocal negotiation which is in prospect, I hope in time that definite gains will result to American agriculture and industry.

"Important branches of our agriculture, such as cotton, tobacco, hog products, rice, cereal and fruit-raising, and those branches of American industry whose mass production methods have led the world, will find expanded opportunities and productive capacity in foreign markets, and will thereby be spared in part, at least, the heartbreaking readjustments that must be necessary if the shrinkage of American foreign commerce remains permanent.

"A resumption of international trade can not but improve the general situation of other countries, and thus increase their purchasing power. Let us well remember that this in turn spells increased opportunity for American sales.

"Legislation such as this is an essential step in the program of National economic recovery which the Congress has elaborated during the past year. It is part of an emergency program necessitated by the economic crisis through which we are passing. It should provide that the trade agreements shall be terminable within a period not to exceed three years; a shorter period probably would not suffice for putting the program into effect.

"In its execution, the Executive must, of course, pay

Continued on page 96

The Food and Drugs Bill in Class Room Study

How Students of Government, Acting As a Congressional Committee, May Consider Senate Bill 2800.

In using the pending Food and Drugs Bill, (S. 2800) as a practical case in the study of the American system of national legislation, the Class in Government and Politics is confronted with a number of questions which must be definitely answered before it can properly proceed with the consideration and disposition of the Food and Drugs Bill itself.

Among the more important of these questions, the following may be cited:

1. Why should a Food and Drugs Bill be considered at this time?

2. What authority has the Congress of the United States to enact food and drug legislation?

3. Is the consideration by Congress of food and drug legislation something new or has it been considered before?

The answer to the first question will be found in the extracts from the annual report of the Food and Drugs Administration of the Department of Agriculture, beginning on page —, and in various statements in the Pro and Con discussion.

For an answer to the second question, the student must look to the Constitution of the United States, Article 1; Section 8, Paragraph 3, which reads: (The Congress shall have Power)—"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;—"

This is generally known as the "Interstate Commerce Clause" of the Constitution and it is under this authority that Congress is able to pass laws governing the shipment of goods from one state to another, as well as laws governing the use of the telegraph, telephone and the radio, since the courts have construed the sending of messages to be interstate commerce.

It is possible to conceive that the interstate commerce clause might also have applied to letters and parcels sent through the mails, but for the fact that the Constitution specifically provides, in Aricle 1, Section 8, Paragraph 7 that,

(The Congress shall have Power) "To establish Post Offices and post Roads."

Consequently, under authority granted it in the organic law of the United States, Congress has passed innumerable laws governing commerce between the states.

The answer to the third question may be found in the Chronology, beginning on page — and in various references to the Food and Drugs Act of 1906, generally known as "The Pure Food Law," in other articles and in the Pro and Con discussion.

In this law Congress laid down conditions under which foods and drugs might or might not be sold in interstate commerce. The Act covered the manufacturer of foods and drugs, provided his products, no matter where they were manufactured, were shipped to dealers and consumers in other states.

The interstate commerce clause of the Constitution does not give Congress power to regulate commerce within a state. Thus a manufacturer of food or drugs in any state is exempt from the provisions of the Food and Drugs Act if his products are manufactured and sold within the borders of his state. For this reason nearly all states have their own state laws covering the manufacture and sale of food and drugs.

Having, therefore, established that, by virtue of the provisions of the Constitution, Congress has the power to enact food and drug legislation; that it already has exercised that power and that further legislation to meet modern conditions is desirable, (since even the opponents of the present bill agree with its proponents that some sort of new legislation is needed) the class should next turn its attention to the pending bill.

Among the major points of dispute regarding the bill, not only as it was originally drawn by the Department of Agriculture, but also in its amended form, as it was reintroduced by Senator Copeland on February 19, as S. 2800, are the following:

Is it necessary to repeal the Food and Drugs Act of 1906 and replace it with a brand new Act or can the necessary objective be reached by merely so amending the old Act as to cover all new conditions that need to be covered?

Is it necessary to give to the Department of Agriculture the power to fix standards or should those standards be fixed in the bill itself, subject to decision by the courts when dubious questions arise under the law?

If a manufacturer works out a secret formula for the production of an article, should he be compelled to publish that formula on the label of his package or should he be permitted to file that formula with the Government for inspection as to its contents with the Government obligated to keep his formula a secret so long as the article is an honest one, neither injurious nor untruthfully described?

The major battle over the bill, as the Digest goes to press, is raging around the giving of the Department of Agriculture arbitrary powers to say whether this or that food or drug product comes up to the standard required by the proposed new law. Discussion of this point and all others will be found in the Pro and Con Section.

How the bill is progressing from the actual legislative standpoint will be found in the introductory article on page 65.

A Glossary of Terms Used in this Number

Cosmetics—The term "cosmetics" includes all substances and preparations intended for cleansing, or altering the appearance of, or promoting the attractiveness of the person.

Drugs—In the bill the term "drug" includes (1) all substances and preparations recognized in the United States Pharmacopoeia or National Formulary; and (2) all substances, preparations, and devices intended for use in the cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) all substances and preparations, other than food, and all devices, intended to effect the structure or any function of the body of man or other animals.

Food—The term "food" in the bill includes all substances and preparations used for, or entering into the composition of food, drink, confectionery, or condiment for man or other animals.

Interstate Commerce—The term "interstate commerce" means (1) commerce between any State or Territory and any place outside thereof, or between points within the same State or Territory but through any place outside thereof, and (2) commerce and manufacture within the District of Columbia or the Canal Zone or within any territory not organized with a legislative body.

Label—The term "label" means the principal label or labels (1) upon the immediate container of any food, drug, or cosmetic, and (2) upon the outside container or wrapper, or the retail package of any food, drug, or cosmetic.

Labeling—The term "labeling" includes all labels and other written, printed, and graphic matter, in any form whatsoever, accompanying any food, drug, or cosmetic.

Advertisement—The term "advertisement" includes all representations of fact or opinion disseminated in any manner or by any means other than by the labeling.

Package Form—The term "in package form" includes wrapped meats enclosed in paper or other materials as prepared by the manufacturers thereof for sale.

Patent or Proprietary Medicines—Any drug, chemical or preparation, whether simple, mixed or compound, intended or recommended for the cure, treatment or prevention of disease of man or lower animals, which is prepared ready for immediate use by and advertised or sold directly to the public; and which is put up in packages labeled with, its name and accompanied by directions for its use; and for the manufacturer of which the manufacturer or owner claims exclusive right or title, and which preparation is protected against free competition as to name, production, composition or process of manufacture, by secrecy, patent, copyright, trademark or in any other manner. (Pharmaceutical definition.)

Slack Pack—A container so made, formed, or filled as to mislead the purchased, or one whose contents fall below the standard of fill prescribed by regulations.

Tolerances—The word "tolerance" means an allowed amount of variation from the standard. The pending food and drug bill provides that "tolerances" are to be used at the discretion of the Secretary of Agriculture. He is authorized to fix, establish, and promulgate definitions of identity and standards and if he finds that the presence of an added poisonous or deleterious substance in or on food or cosmetics may be injurious to health, he shall prohibit the addition of such substances, or establish tolerances limiting the amount to be used, to such an extent as he may deem necessary to prevent injury to health.

A Selected Reading List on Food and Drugs Legislation

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The Food, Drug and Insecticide Administration: Its History, Activities and Organization, by Gustavus Weber, Institute of Government Research. The Johns Hopkin's Press, Baltimore, Maryland, 1928.

Harvey W. Wiley, an Autobiography, The Bobbs-Merrill Company, Indianapolis, Ind., 1930.

"Proprietary Association President Answers Tugwell on New Drug Bill," Frank Blair, *Oil, Paint & Drug Reporter*, Oct. 9, 1933.

"Analyzing the New Drug Act," *Drug and Cosmetic Industry*, August, 1933.

"Medicine Makers' View of the Tugwell Bill," Wm. P. Jacobs, *Broadcasting*, Nov. 1, 1933.

"Drug Law Revision Called Hazardous," Wm. P. Jacobs, *Oil, Paint & Drug Reporter*, Oct. 23, 1933.

"The Case against the Tugwell Bill," *Advertising and Selling*, Nov. 9, 1933.

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The Students' Question Box

Q.—Was George Washington the first President of the United States?

If so, what gives rise to the oft-repeated statement that John Hanson, of Maryland, was the first President?

A.—George Washington was the first President of the United States.

The principal reason why he was is this:

Until the adoption of the Constitution of the United States, there was no such office as President of the United States.

Prior to the adoption of the Constitution the United Colonies operated, at first, under a loosely drawn agreement, worked out soon after the First Continental Congress met at Philadelphia in 1774, and later, under the Articles of Confederation, drafted in 1776 and ratified by the states in 1781.

The First Continental Congress met at Philadelphia on September 5, 1774, and sat until October 26, 1774. It was called following the quartering of British troops in Massachusetts and the closing of the Port of Boston after the Boston Tea Party.

On May 10, 1775, the Second Continental Congress met at Philadelphia and remained in session until December 26, 1776.

On June 11, 1776, while the Declaration of Independence was under consideration, but before it had been adopted (July 4, 1776), the Second Continental Congress adopted a resolution for the appointment of a committee "to prepare and digest the form of a confederation to be entered into between these Colonies." The committee was appointed the following day, June 12. One month later, July 12, the committee reported a draft of the Articles of Confederation.

This committee report was thoroughly discussed in the Congress from time to time and on November 15, 1776, it was adopted by the Congress as "Articles of Confederation and Perpetual Union." The Articles were sent to the various Colonies for ratification.

Maryland, the last state to ratify, signed the ratification on March 1, 1781, and on March 2, the Congress met for the first time as the formally authorized legislative body of the states.

Article 1 of the Articles of Confederation provided that:

"The Stile of this confederacy shall be 'The United States of America.'"

The Articles contained no provision whatever for a chief executive officer of the United States. The nearest approach to it was contained in Paragraph 5 of Article IX, which provided that the Congress should have authority "to appoint a committee, to sit in recess of congress, to be denominated 'A Committee of the States' to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years. . . ."

From this it will be seen that the only type of president provided for in the Articles of Confederation was a presiding officer of an interim committee of the Congress. His position was the equivalent of what today would be the chairman of a special committee of the House or Senate authorized to sit and perform limited functions during a recess of Congress. These Articles of Confederation prevailed until the ratification of the Constitution of the United States (1788) and the setting up of the new government in 1789.

Beginning with its organization in 1774, however, the Continental Congress each year chose a President of the Continental Congress and it is this office that apparently has now and then become confused with that of President of the United States. But here, again, those stating that John Hanson of Maryland was first President are mistaken.

John Hanson was, for one year, President of the Continental Congress, but he was not even the first President of that body. Following is a list of the Presidents of the Continental Congress with the dates of their assumption of that office:

Peyton Randolph, of Va. (Resigned October 22, 1774)	Sept. 5, 1774
Henry Middleton, of S. C.	Oct. 22, 1774
Peyton Randolph, of Va. (Died October 22, 1775)	May 10, 1775
John Hancock, of Mass.	May 24, 1775
Henry Laurens, of S. C.	Nov. 1, 1777
John Jay, of N. Y.	Dec. 10, 1778
Samuel Huntington, of Conn.	Sept. 28, 1779
Thomas McKean, of Del.	July 10, 1781
John Hanson, of Md.	Nov. 5, 1781
Elias Boudinot, of N. J.	Nov. 4, 1782
Thomas Mifflin, of Pa.	Nov. 3, 1783
Richard Henry Lee, of Va.	Nov. 30, 1784
John Hancock, of Mass. (Resigned May 29, 1786, never having served, owing to continued illness)	Nov. 23, 1785
Nathaniel Gorham, of Mass.	June 6, 1786
Arthur St. Clair, of Pa.	Feb. 2, 1787
Cyrus Griffin, of Va.	Jan. 22, 1788

If the period from the first meeting of the Continental Congress to final ratification by the Colonies of the Articles of Confederation, that is 1774-1780, is taken, Peyton Randolph of Virginia was the first President of the Congress, and John Hanson was the eighth, since Randolph served twice. If the period after ratification, 1781-1788, is taken, Thomas McKean of Delaware was the first President and John Hanson was the second.

Therefore, to call John Hanson the first President is to err on two counts.

The thought that Hanson was President is generally believed, by accurate students of American history, to be due to the fact that as President of the Continental Congress he was the man who extended the thanks of the Congress to George Washington on the victory of the

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A Selected Reading List on Food and Drugs Legislation

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"Another Look at the Pure Food Bill," Earnest Elmo Calkins, *Good Housekeeping*, December, 1933.

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"How the Food Maker Regards the Proposed Food Law," Lawrence V. Burton, *Food Industries*, December, 1933.

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"A New Pure Food Bill," Dr. Walter H. Eddy, *Good Housekeeping*, October, 1933.

"Patent Medicines and the Law," Arthur J. Cramp, *American Mercury*, November, 1933.

"We Need That New Pure Food Law," Milo Hastings, *Physical Culture*, November, 1933.

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"Advertising and the New Food and Drugs Bill," Rexford G. Tugwell, *Editor & Publisher*, Sept. 16, 1933.

"How the Food and Drugs Bill Would Affect Radio," Rexford G. Tugwell, *Broadcasting*, Sept. 15, 1933.

"The Copeland Bill and the Food Industries," Rexford G. Tugwell, *Grocery Trade News*, Oct. 24, 1933.

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"Pure Food to The Fore," *Today*, Jan. 6, 1933.

"A Housewife Praises," Catharine Hackett, *The Forum*, February, 1934.

"To The Rescue of Consumers," T. Swann Harding, *World Tomorrow*, February 1, 1934.

Editorial, *Nation*, Jan. 31, 1934.

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"Chiselers at Work and Play," Paul Y. Anderson, *The Nation*, Feb. 7, 1934.

The Students' Question Box

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Continental troops at Yorktown, by which action his name was written in history.

Following is the official record of John Hanson, as given in the Biographical Congressional Directory, published by Congress:

John Hanson (grandfather of Alexander Contee Hanson) a delegate (to the Continental Congress), from Maryland; born near Port Tobacco, Charles County, Maryland, in 1715; pursued an academic course; engaged in agricultural pursuits; member of the State house of delegates for nine terms; member of the State senate 1757-1773; moved to Frederick County in 1773; active in pre-Revolutionary matters; Delegate to the General Congress at Annapolis in 1774; treasurer of Frederick County in 1775; member of the Maryland convention of 1775 which issued its declaration known as the "Association of Freemen of Maryland"; Member of the Continental Congress 1780-1783; elected President of the Continental Congress on November 5, 1781; served one year, and in that capacity tendered General Washington the thanks of the Congress for the victory of Yorktown; signer of the Article of Confederation of the United States; retired from public life and sought seclusion and rest; died at the residence of his nephew at Oxon Hill, Prince Georges County, Maryland, November 27, 1783, and is interred there.

The incontrovertible evidence that George Washington was the first President of the United States is found in the fact that that office was created by the Constitution of the United States, which was adopted by the Constitutional Convention at Philadelphia, September 17, 1787, and ratified by the requisite nine states when South Carolina, the ninth state to ratify, ratified it on May 23, 1788.

The Constitutional provision for the Presidency is this:

"Article II, Section 1, Paragraph 1:—The executive Power shall be vested in a President of the United States."

George Washington was inaugurated President at New York (where the First Congress of the United States had been sitting, since March 4, 1790, the date set for the new government to begin), on April 30, 1790, and was the first man ever to hold the office of President of the United States. He had been elected unanimously, being the only man ever to be elected President without opposition.

Membership of Senate Committee on Commerce

Hubert D. Stephens, of Mississippi, Chairman.
Duncan U. Fletcher, of Florida.
Morris Sheppard, of Texas.
Royal S. Copeland, of New York.
Josiah W. Bailey, of North Carolina.
Hattie W. Caraway, of Arkansas.
Bennett Champ Clark, of Missouri.
Louis Murphy, of Iowa.
John H. Overton, of Louisiana.
Charles L. McNary, of Oregon.
Hiram W. Johnson, of California.
Gerald P. Nye, of North Dakota.
Arthur H. Vandenberg, of Michigan.
Roscoe C. Patterson, of Missouri.
Wallace H. White, jr., of Maine.

Membership of House Committee on Education

John J. Douglass, of Massachusetts, Chairman.
Loring M. Black, jr., of New York.
Vincent L. Palmisano, of Maryland.
René L. DeRouen, of Louisiana.
Martin J. Kennedy, of New York.
William H. Larrabee, of Indiana.
Russell Ellzey, of Mississippi.
Brooks Fletcher, of Ohio.
Braswell Dean, of Georgia.
Joseph W. Bailey, jr., of Texas.
James Hughes, of Wisconsin.
William M. Berlin, of Pennsylvania.
John Lesinski, of Michigan.
Kathryn O'Loughlin McCarthy, of Kansas.
Frank Gillispie, of Illinois.
James L. Whitley, of New York.
Albert E. Carter, of California.
James M. Beck, of Pennsylvania.
P. H. Moynihan, of Illinois.
L. T. Marshall, of Ohio.
Charles M. Bakewell, of Connecticut.

SOURCES OF INFORMATION FOR THIS NUMBER

1. Hanson, Cavers, Dunn—Hearings, Subcommittee of Senate Committee on Commerce, Dec. 7-8, 1933.
2. Annual Report, Chief Food and Drug Administrator, U. S. Department of Agriculture, 1933.
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4. Campbell—Article, Oil, Paint and Drug. Reporter, November 27, 1933.

Tariff

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due heed to the requirements of other branches of our recovery program, such as the National industrial recovery act.

"I hope for early action. The many immediate situations in the field of international trade that today await our attention can thus be met effectively and with the least possible delay."

Veterans

As the DIGEST goes to press a bitter struggle is on in the Senate over a move to restore part of the veterans' benefits abolished by President Roosevelt as part of his economy policy.

Indications are that both houses will eventually vote to give more allowances to the veterans but just what form the legislation will take cannot be predicted.

The indications are that some sort of compromise will be reached between the White House and Congress and that the President will yield to part of the Congressional demands rather than veto a veterans' bill.

Whatever provision is made for the veterans will be written into the Independent Offices Appropriation bill in the Senate.